

An employer who fails to comply with the Occupational Health & Safety Regulation or Board orders or directions is subject to sanctions as prescribed in the Workers Compensation Act.

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| Date of Issue | Number        | Number of Orders | Employer | Location | Classification Unit Number | Activity Time Recorded* | Travel Time Recorded* |
|---------------|---------------|------------------|----------|----------|----------------------------|-------------------------|-----------------------|
| 2007-01-05    | 2006140330203 | 1                | 4000     | 028      | 841102                     | 22.50                   | 4.00                  |

\* The Time Recorded reflects only that time which has been charged to this inspection up until the document was printed for delivery. Subsequent time may be added for additional activity related to this inspection.

| Number of Workers | Project Number | Site Visit Date | Lab Samples Taken | Direct Readings | Results Presented | Sampling Inspection(s) |
|-------------------|----------------|-----------------|-------------------|-----------------|-------------------|------------------------|
| 51-100            |                | 2006-12-20      | N                 | N               | N                 |                        |

| Head Office   | Job Site  |
|---|---|
| PROVINCIAL GOVERNMENT<br>WORKERS' COMPENSATION PROGRAMS<br>BC PUBLIC SERVICE AGENCY<br>P O BOX 9404 STN PROV GOV'T<br>VICTORIA BC V8W 9V1 | North Fraser Pre Trial<br>1451 Kingsway Ave<br>Port Coquitlam, BC |

|                   |                                      |
|-------------------|--------------------------------------|
| Portion Inspected | Work refusal<br>UNKNOWN              |
| Violations        | REFER TO ORDERS ON FOLLOWING PAGE(S) |

| Employer Representative Name     | Accompanied By Employer Representative |
|----------------------------------|--|
| Jim Reilly                       | Jim Reilly                             |
| Employer Representative Position | Accompanied By Worker Representative   |
| Assistant Deputy Warden          | Dave Backeland                         |
| Phone Number                     | Organization                           |
| 604 468-3500                     | BCGEU                                  |
| Signature                        | Officer of the Board / Signature       |
|                                  | MERRYWEATHER, JERYL                    |

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## Inspection Text

Comments issued on: Jan 08, 2007

A review of the employer's history regarding the order(s) cited on this inspection report has determined that consideration for proceeding with an Administrative Sanction is not necessary at this time. This decision relates only to this inspection date, location and order(s) noted on this IR. A follow-up inspection may occur and/or a Notice of Compliance document may be required to authenticate appropriate compliance with the order(s) noted.

Issued on: 2007/01/05

## Officer Inspection Text

On Tuesday, December 19, 2006, Worksafebc was contacted by the Assistant Deputy Warden, Adult Custody Division (ADWAC) indicating there had been a work refusal earlier in the afternoon where two workers refused to transport inmates to another site for x-rays. The ADWAC reported, although, the work activity in question had been completed by a third worker, without incident, the initial workers claimed the matter was not resolved. Based on this information it was agreed this office would attend the site the next day to meet with all parties. Violations determined, which were separate from the subject of the refusal to work, are documented in inspection report 2006140330202.

The purpose of this inspection report is specific to this site and specific to the subject of the reported undue hazard to the two workers and determination of the work refusal.

Attending the Wednesday, December 20, 2006, meeting was:

Assistant Deputy Warden, Adult Custody Division (ADWAC),  
Assistant Deputy Warden, Programmes (ADWP),  
Worker Co Chair, joint health & safety committee (JHSC),  
Corrections Officer (C01),  
Corrections Officer (C02),  
Worksafebc prevention officer Goodman, and  
Worksafebc prevention officer Merryweather.

The ADWAC explained the company procedure for transporting inmates from a secure site, North Fraser Pretrial Centre (NFPC) to another secure site, such as, Fraser Regional Correction Centre (FRCC) required only one correction officer to conduct the transport. However, when inmates were transported from a secure site to an unsecured site the procedure requires at least two corrections officers. In addition, when inmates are taken to the transport vehicle they are in leg restraints and hand shackles and a floor officer assists the corrections officer to the transport vehicle under camera surveillance. Once inside the vehicle the inmates are placed into cells and secured and the cells are secured to the vehicles. The officers are equipped with personal protective equipment such as kevlar vests, asp batons, pepper spray, personal alarm transmitters, 2 way radios and cell phones when escorting inmates to the transport vehicle.

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There was some discussion regarding the differences between an inmate "escort" and a "transport". The ADWAC explained an escort is a directive from the Corrections Branch to move an inmate from a secured facility (ie. North Fraser Pretrial) into the community (unsecured site). Under these circumstances the employer conducts risk assessments and controls are established, such as, more than one corrections officer assigned, to eliminate or minimize the risk of injury to workers. A transfer, on the other hand, is when inmates are moved from one secured site to another. (ie NFPC to FRCC) The ADWAC stated there has never been an incident of workplace violence arise from transferring inmates.

On December 19th, 2006 at approximately 7:30 AM a corrections officer (C01) was assigned to transport seven inmates from the North Fraser Pretrial Center to the Fraser Regional Correctional Centre in Maple Ridge for x-rays. The C01 stated he asked for and was given a list of the names of the seven inmates. Upon reading this list the C01 recognized the names of several individuals that gave him concern. Utilizing the in house computer system the C01 researched the history of the inmates on the list and this history showed that several of the inmates had a record of violence. The C01 spoke to the ADWP and expressed his concern that due to the violent nature of some of the inmates he believed he was placed at a higher risk of injury and therefore, there should be an additional corrections officer assigned to accompany him with the transport. The C01 also expressed concern that he hadn't received training on the ASP baton and pepper spray for a long time and wasn't comfortable with this assignment.

The ADWP explained to C01 the assignment was a normal transfer as per Corrections Branch Policy. The ADWP asked C01 more than once if he was refusing the assignment and he eventually acknowledged that he was refusing the assignment. The C01 was then informed that he was relieved of this assignment and directed to contact the worker co-chair to discuss the issue with him. The worker co-chair stated he was working when he was approached by C01 and was not formally relieved of his duties or asked by the ADWP to participate in an investigation of the work refusal.

A second corrections officer (C02) stated that he was approached by the ADWP and given the assignment to transport these same inmates. The C02 stated he was not told of the prior work refusal. The C02 stated he asked for and received a list of the names of the inmates to be transported. He had concern when viewing the names of the inmates on the list and upon researching their history he felt concern for his safety. He spoke to the ADWP expressing his concern and requested an additional corrections officer be assigned to this transport. When informed that an additional officer would not be provided, C02 also refused and was relieved of this assignment by the ADWP.

At this time the inmate transport was re-assigned to a third corrections officer (C03) who completed the assignment successfully and without incident. It was not known at the time of this meeting if C03 had been advised of the two prior work refusals. However, the worker co-chair stated the transfer was given to C02 & C03 prior to an investigation being conducted with the ADWP, C01 & the worker co-chair. The ADWP stated, based in part, on the:

\* lack of identification by C01 & C02 of known, undue hazard(s) to their health & safety,

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\* employer's transfer policy, and  
\* transfer risk controls in place,  
he interpreted C01 & C02's refusal to conduct the transfer as a "staffing issue" not a section 3.12

In order for Worksafebc Prevention officers to determine if there would be an undue hazard to the health and safety of the CO's from conducting the transfer there must be reasonable grounds for believing that an immediate danger existed that would likely result in serious injury, serious illness or death to a worker. For example, the corrections officers would have to believe that taking this assignment would result in an immediate danger to their health and safety. The Worksafebc Prevention officers questioned C01 & C02 regarding what work activities, specific to this transfer assignment, did they have reasonable cause to believe, would create an undue hazard and place them in immediate danger. While they both expressed concern that there was a possibility of danger in taking this assignment neither C01 nor C02 could confirm that taking this assignment would create an undue hazard to themselves. Some concerns identified were the possibility of getting involved in a traffic accident, being attacked by persons while on route to the FRCC, general feeling of being unsafe, etc.

Based on the above information I have determined there was no evidence provided which would establish any work activities specific to this transfer of inmates from a secured facility to another secured facility within a short distance of each other, which would create an undue hazard to the health & safety of the corrections officers. For example: if a worker is directed to enter a confined space without appropriate personal protective equipment, prior atmosphere testing, stand-by worker, etc and the atmosphere and prior contents are unknown, a worker may have reasonable cause to believe that to enter the confined space would create an undue hazard to their health & safety.

An investigation of this work refusal under section 3.12 has not identified an undue hazard.

Further discussions included the employer representative's actions of directing subsequent correction officer's to conduct the inmate transfer. The 3.12 legislation appears silent with regards to directing work to other workers when a work refusal has not been resolved. Therefore, I draw the employer's attention to its responsibilities under sections of WC Act 115, specifically to ensure the safety of all workers working for it and that workers are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work. The employer must demonstrate it has taken all reasonable steps to be duly diligent during the investigation and approach this work practice, failing to tell other workers of the circumstances of the 3.12 and investigation, with caution.

The findings of this report were discussed with the employer & worker representatives at the conclusion of the Prevention officers investigation. Given the seasonal absences and to ensure full attendance the ADWAC agreed to the delivery of this report on January 5, 2007.

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| 2007-01-05    | 2006140330203 | 22.50                  | 4.00                 | PROVINCIAL GOVERNMENT |

|              |   |          |   |               |                 |
|--------------|---|----------|---|---------------|-----------------|
| Order Number | 1 | Decision | C | WCB Reference | OHS 3 12 (4)(a) |
|--------------|---|----------|---|---------------|-----------------|

A worker invoked his right to refuse unsafe work and when the Assistant Deputy Warden, Programme's (ADWP) investigation did not resolve the matter and the worker continued to refuse the work, the ADWP did not investigate the matter in the presence of the worker and in the presence of the worker member of the joint committee. In the investigation of a refusal to work based on an unsafe condition, the supervisor or employer failed to include a worker member of the joint committee.

This is in contravention of the Occupational Health and Safety Regulation Section 3.12(4)(a).

If the procedure under Subsection 3.12(3) does not resolve the matter and the worker continues to refuse to carry out the work process or operate the tool, appliance or equipment, the supervisor or employer must investigate the matter in the presence of the worker who made the report and in the presence of a worker member of the joint committee.

The employer is ordered to ensure, in those situations where there is an investigation of a refusal to work based on an unsafe condition and the;  
\* matter can not be resolved with the worker alone, and  
\* worker continues to refuse to carry out the work process,  
the supervisor or employer investigates the matter in the presence of the worker and in the presence of the worker member of the joint committee.

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