

Subject: Truck safety

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From: Elizabeth James <cagebc@yahoo.com>

To: Mayor Janice Harris and Council <council@dnv.org>, "James Ridge, CAO" <james_ridge@dnv.org>

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31 March 2005

Mayor Harris and Council
James Ridge, CAO:

Well before the Capilano-Seymour filtration project was commenced, I made a presentation to Council on the subject of truck safety of vehicles traveling North and West Vancouver streets. The reason I did so was that West Vancouver had just experienced the second of two serious incidents involving trucks that had lost braking power on steep hills down to Marine Drive.

At the time of my presentation, then-Mayor Bell, assured me that strict regulations were to be applied to the Cap-Seymour project and that a monitoring committee would be keeping a close eye out for dump-truck maintenance. That was, and is, reassuring - if it is happening.

What concerns me today is that Mayor Bell also said that he and Staff would be liaising with the other North Shore administrations, as well as with RCMP and West Vancouver police, with the intent of approaching 'the powers that be' in Victoria to achieve a more comprehensive, long-term solution. Despite all of those good intentions, several more, very serious, trucking accidents have occurred around the province - some of them involving fatalities of still more innocent drivers.

Following the local horror story of the badly-maintained logging trucks which caused the fatal accident on the Upper Levels, I again wrote on the matter - to you and to Council. Since then, we have learned that, at two major truck inspections, over 50% of the vehicles had to be issued suspensions/tickets for maintenance and safety violations - the most recent being just last week.

During this past winter season, there have been numerous events - I will not call them accidents - which involved jack-knifing semi-trailers and truck rollovers. While these varied in severity, most news coverage reported involvement of other vehicles and/or major road closures while the messes, if not bodies, were cleaned up and police investigations completed.

The final straw for me, has been the report earlier today of yet another fatality. An innocent, 73-year old man, driving an Interior road, just happened to be in the wrong place at the wrong time, when a semi-trailer truck lost its insecure load of steel. This has to be stopped!

It used to be that truckers were professional drivers; drivers who could be relied upon to obey the rules of the road and set standards of safety and courtesy for all the other drivers on the road. They were drivers one could turn to for assistance in an emergency. They also babied their vehicles and kept them in top condition. Such is no longer the case.

Now, trucks are driven with no brakes, with bald tires and rusted-out undercarriages, and with ill-secured loads. Drivers hold the trucks together with string and tailgate at high-speed without a hope in Hades of being able to stop safely in an emergency. They just cross their fingers and hope to make it home before killing someone.

Either these drivers are poorly-trained, incompetent, under pressure from the owners, are driving too many hours to make a dollar, or they are grossly - often homicidally - negligent. Whatever the reason, it is long past time that someone stepped up to the plate to take responsibility for action.

Apart from, one more time, drawing this issue to the attention Council and Staff, I would like to suggest that the District of North Vancouver take the lead and convene a meeting to include representatives of Councils around the province, the RCMP and municipal police forces, ICBC, unions, WCB and, of course, the trucking industry. Ideally, such a forum would have been tackled by UBCM, but the matter is far too urgent to wait yet another six months before being aggressively addressed.

People have had enough. We have all had more than enough -- with street-racers, with home invasions, with swarmings, muggings, gang warfare, knives and guns at SkyTrain stations, and with the carnage on our streets and highways.

Citizens pay a merry fortune in taxes to all levels of government. They have had it up to their eyeballs with spending billions for a dysfunctional gun registry, instead of for more police on the streets. They've had it with an Attorney-General who pompously tells potential voters that his

government is going to urge the federal government to increase penalties to 12 or 20 years, when he knows perfectly well that even the current 7-year penalty option has never been used.

Taxpayers also have had it with writing to their local, provincial and federal politicians and receiving little, if anything, by way of thoughtful reply or commitment to follow through with solutions. At last people are getting angry enough to stand up to demand action instead of political talk, talk, talk. Good. It's about time.

I don't know what may have transpired up at the Hall since Mayor Bell expressed his "concern" and commitment to do something on the issue of truck safety. What I do know, is that I never received a follow-up telephone call to advise what actions, if any, were being taken, let alone anything in writing. I might as well have whistled in the wind.

The only recent communication on the topic, was the one received from newly-elected Clr. Cuthbert, to ask if I had had a reply to my January email, copied to Council. Nevertheless, I could understand if that query had been put to one side of desks covered with communications regarding the Riverside-Berkeley slides.

I sincerely hope, however, that no such event will occur to defer Council's immediate attention to this present email. I look forward to an early, positive and proactive reaction from Council and Staff to address these serious concerns - and sincerely hope action will be taken before yet another trucking accident results in serious damage or death.

In the interim, I am including as a memory-jogger, a copy of my email of January 28th of this year.

Sincerely,

Liz James
[604] 988-2066

28 January 2005

Dear Mr. Ridge:

First, matters hydrologic, and now truck safety. It's as though I'm operating on ESP these days.

No sooner did I have the thought to write to ask you for an update to the issue of truck safety in the District, than we learn a recent disturbing report revealed that 60% of dump trucks operating and inspected in another Lower Mainland jurisdiction were found to have serious defects.

You may remember that former-Mayor Bell indicated he would be contacting local RCMP and the government in Victoria to see what measures could be taken to tighten regulations and improve truck maintenance. Further, following last November's tragic event on the Upper Levels Highway, more investigation was to be undertaken. Yet still police find 60% of dump trucks which were pulled over at the Patullo Bridge has serious safety problems - the Patullo Bridge yet! That is one of the most hazardous traffic locations in the Lower Mainland.

This is my position: Truck drivers and their companies who, for whatever economic or "can't be bothered" reason, do not maintain their vehicles in safe condition, are deliberately putting the lives of innocent citizens at risk. In other, international, law, deaths resulting from such negligence can be deemed *negligent homicide* or *corporate manslaughter*. As such, a company and/or an individual who *knew, or should have known* that the vehicle is unsafe can be held criminally responsible for death or injury resulting from that negligence.

I do not know what law applies in Canada but the following excerpt from the English House of Lords [Supreme Court] reads as follows:

Involuntary manslaughter by gross negligence

The House of Lords laid down a four stage test for involuntary manslaughter by means of a grossly negligent act or omission in *<R.v. Adomako (1995) 1 AC 171>*:

- Did the defendant owe a duty of care towards the victim who has died?
- If so, has the defendant breached that duty of care?
- has such breach caused the victim's death? (The law of negligence must be applied to ascertain whether or not there has been a breach of the duty);
- If so, was that breach of duty so bad as to amount, when viewed objectively, to gross negligence warranting a criminal conviction?

Consideration of those questions will involve the application of legal principles which are usually regarded as forming part of the civil law of tort, not the criminal law.

There are a wide variety of circumstances in which consideration may need to be given to indicting a company for manslaughter arising out of its operations. The victims of fatal accidents may be employees or customers of the company in question or members of the public. Common examples are:

- work-related fatal accidents arising out of unsafe systems of work,
- fatal accidents resulting from the provision of unsafe goods or services,
- fatal road traffic accidents in cases where company vehicles are unsafe.

A company may be a potential defendant by reason of its capacity, for example, as an employer, a supplier of goods, or as a contractor. In appropriate cases, therefore, you should consider whether the company itself - in addition to any individuals - should be prosecuted for manslaughter but this depends on the following evidential requirements.

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The Causal Link and Controlling Mind

A company acts through the human agency of its directors, managers and staff. In order to convict a company of manslaughter it must be shown that a causal link existed between a grossly negligent act or omission by a person who is the "controlling mind" of the company and the immediate cause of death.....

Many other references - including North American - can be found which refer to individual and/or corporate responsibility.

In any event, it would be much appreciated if Staff could determine the status of the District file on this issue, and make District residents aware of the steps that are being taken to ensure their protection against unsafe trucks on North Shore streets.

Many thanks for your assistance....

Sincerely,

Liz James

Send instant messages to your online friends <http://uk.messenger.yahoo.com>