

**Subject: Truck Safety**

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**To:** "James Ridge, CAO" <james\_ridge@dnv.org>, Mayor and Council <council@dnv.org>

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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 have 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

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