

Manitoba Ombudsman

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February 7, 2013

The Honourable Ken Champagne
Chief Judge
Provincial Court of Manitoba
5th Floor - 408 York Avenue
Winnipeg MB R3C 0P9

Dear Chief Judge Champagne:

**INQUEST INTO THE DEATH OF STEVEN RYAN EWING
AT FLIN FLON MANITOBA
OUR FILE: 2008 - 0531**

I am writing to advise of the results of the inquiries made by my office concerning the Inquest Report Recommendations dated October 30, 2008, issued by the Honourable Judge Robert Cummings into the death of Steven Ryan Ewing.

Steven Ryan Ewing came to his death on August 16, 2000 at the Health Sciences Centre in Winnipeg Manitoba. He was 33 years of age at the time of his death. Mr. Ewing died as a result of injuries sustained in an explosion, or series of explosions, on August 8, 2000 at Flin Flon, Manitoba.

The Chief Medical Examiner called an Inquest pursuant to subsection 19(3) of The Fatality Inquiries Act. The Inquest Report was released on November 4, 2008.

As you are aware, it is the practice of my office to follow up on inquest recommendations when they relate to a provincial government department, agency or municipality. In this case, Judge Cummings made five recommendations which were directed to the Workplace Safety and Health Division of Manitoba Labour and Immigration under the general provisions of The Workplace Safety and Health Act (WSHA). The following are the recommendations:

RECOMMENDATIONS

Recommendation 1:

The Advisory Council established pursuant to section 15 of the **WSHA** and/or the standing committee under the Operation of Mines regulation should review my recommendations and report to the Minister;

Response to Recommendation 1:

On April 07, 2009 we were advised:

Manitoba Labour and Immigration is already acting on the recommendations in the inquest report. A detailed review of the Operation of Mines Regulation (Mines Regulation) has been underway by a sub-committee of the Minister's Advisory Council on Workplace and Health (Council) for the past year. The recommendations contained in the inquest report were reviewed by the sub-committee, with the assistance of staff from the Workplace Safety and Health Division. A report from the sub-committee based on the inquest recommendation was presented to and endorsed by Council at its meeting on February 27, 2009.

Council's recommendations for changes on matters suggested by the inquest report, as well as recommendations on other issues raised during a broader review of the Mines Regulation, will be submitted to the Minister by June 2009. Thereafter, the Department will develop a formal proposal for changes to the Mines Regulation for the Minister's consideration.

Recommendation 2:

The **WSHA** or its regulation should be amended to reflect that no worker should be tethered to mobile machinery;

Response to Recommendation 2:

On April 09, 2009 we were advised:

With respect to the recommendations for tethering to mobile equipment and working with water around molten material, please note the Workplace Safety and Health Division (WSH) is already proactively enforcing requirements under the general provisions of The Workplace Safety and Health Act. WSH is working to ensure that these issues are adequately addressed before the anticipated changes to the Mines Regulation are implemented.

Our Office was advised at a later date that the Operation of Mines Regulation had been amended to include this recommendation.

Worker not to be tethered

7.9(1) An employer must not permit a worker to be tethered, strapped or physically bound to remote controlled equipment.

Recommendation 3:

The Operation of Mines regulation should be amended to define "near misses" and place an onus on every person in the workplace to report a near miss;

Response to Recommendation 3:

Our Office was advised that the Operation of Mines Regulation has been amended to include a definition for "near miss" and that the determination of a near miss shall be outlined in a written policy by the employer in consultation with the committee and acceptable to the chief mines inspector.

"near miss" means an incident that had the potential to cause serious bodily injury or illness to a worker, but no bodily injury or illness occurred as a result of the incident.

Recommendation 4:

The Operation of Mines regulation should be amended to state:

- a. Water should not be allowed to contact molten material under any circumstances;
- b. If water is to be used on premises where molten material is present, it should only be used after an engineering study has shown that it can be used safely and after such study delineates the parameters and restrictions on its use.

Response to Recommendation 4(a):

Our Office was advised that the Operation of Mines Regulation has been amended to include this recommendation.

Using water or deleterious substances

10.4(1) A production plant containing molten material must be designed to prevent, as far as reasonably practicable, the direct contact of water or a deleterious substance with molten material, hot refractories, furnaces or ancillary equipment.

Response to Recommendation 4(b):

Our office has been advised that the Operation of Mines Regulation has been amended to include this recommendation.

10.4(2) If water or a deleterious substance is to be used at a mine in a process where contact with molten material may create a hazard to a worker, the employer must

- (a) develop safe work procedures in consultation with a professional engineer who certifies that the use of the water or deleterious substance is safe;*
- (b) provide a copy of the safe work procedures to a mines inspector;*
- (c) implement the safe work procedures in accordance with the specifications of the professional engineer;*
- (d) train workers in the safe work procedures; and*
- (e) ensure that workers comply with the safe work procedures.*

Recommendation 5:

The WSHA should be amended to provide for the precise and systematic procedure for controlling identified hazards as set out in the section "Systematic Procedures and Safety".

Response to Recommendation 5:

Our Office has been advised that the Operation of Mines Regulation has been amended to include this recommendation.

Eliminating or control of risks

2.1(1) Where there is a risk to the safety or health of a worker, the employer must, if reasonably practicable, eliminate it through

- (a) the design of the workplace;*
- (b) the design of the work process; or*
- (c) the use of engineering controls.*

2.1(2) If the measures under subsection (1) fail to eliminate the risk, the employer must control any risk that remains

- (a) through one or a combination of the following, and to the extent practicable:*
 - (i) the design of the workplace,*

*(ii) the design of the work process,
(ii) the use of engineering controls; and
(b) to the extent risk remains after taking the measures under clause (a), by implementing safe work procedures that reduce the remaining risk as much as reasonably practicable.*

Further information regarding these changes can be found at:

<http://web2.gov.mb.ca/laws/regs/pdf/w210-212.11.pdf>

Based on our review of this matter, it would appear that the Department of Manitoba Labour and Immigration has given reasonable consideration to the recommendations contained in the inquest report. We have been provided with confirmation that the amendments to the Operation of Mines Regulation have been completed in accordance with the Judge's recommendations.

As such, our file concerning the inquest has been closed.

Yours truly,

Original signed by

Mel Holley
Acting Ombudsman

cc: Mr. Dave Dyson, Assistant Deputy Minister, Workplace Safety and Health
Dr. Thambirajah Balachandra, Chief Medical Examiner