

This agreement entered into the 1st day of September, 2021

## **MEMORANDUM OF UNDERSTANDING**

BETWEEN:

**British Columbia Safety Authority**

(hereinafter referred to as "Technical Safety BC")

AND:

**British Columbia Coroners Service**

(hereinafter referred to as the "Coroners Service")

(Collectively known as the "Parties")

## PURPOSE AND OBJECTIVE

It is in the public interest that there is mutual cooperation and efficient and appropriate disclosure of information and records between Technical Safety BC and the Coroners Service in order to fulfill their respective mandates under the *Safety Standards Act* and *Coroners Act* and in accordance with the *Freedom of Information and Protection of Privacy Act*.

Technical Safety BC and the Coroners Service wish to establish a protocol to do so. This Memorandum of Understanding (“MOU”) forms the basis for a cooperative working relationship between Technical Safety BC and the Coroners Service, and outlines the intent of the Parties to expand upon areas of cooperation for the purpose of improving safety across British Columbia.

### A. Definitions:

- a) **Coroner** means the Chief Coroner of British Columbia and all persons appointed as coroners or retained to act as coroners under the *Coroners Act* (s. 54 and 55).
- b) **Evidence** means physical material, information and data gathered in the course of investigation.
- c) **Holdback** means one or more pieces of significant evidence that is known only to a select number of people. Access to, and knowledge of this evidence, must be strictly controlled and limited to those members of a Parties’ investigative team and other limited persons who need to know.
- d) **Incident** means a fatality arising from or suspected as arising from regulated work or equipment.
- e) **Investigation** means an analysis of Evidence by an authority having jurisdiction, in order to determine causal and contributing factors of an Incident.

### B. MOU Authority and Scope:

- 1. This MOU is entered into by the Coroners Service pursuant to section 67 of the *Coroners Act*, and by Technical Safety BC under the authority of the *Safety Authority Act* in carrying into effect the applicable legislation.

### C. Jurisdiction and Mandate:

- 2. Technical Safety BC is an independent not-for-profit authority constituted under the *Safety Authority Act* with delegated authority under the *Safety Standards Act* and *Railway Safety Act* to oversee the safe installation and operation of regulated technical systems, equipment, and provincially certified railways in British Columbia.

3. Technical Safety BC has a mandate to carry on activities throughout British Columbia that foster safety in the design, manufacture, disposal, construction, installation, operation, maintenance and use of technical products, equipment, systems and railways. Technical Safety BC is typically involved in investigations into deaths related to amusement devices, boiler/pressure vessels & refrigeration, electrical, elevating devices, gas, passenger ropeways and railways.
4. Technical Safety BC has the authority to investigate incidents under the *Safety Standards Act* whether or not the incident was reported.
5. The Coroners Service has jurisdiction to investigate deaths reportable under Part 2 of the *Coroners Act*. The Coroners Service has authority to conduct investigations set out in Part 3 of the *Coroners Act*.
6. The Parties will operate in a coordinated and cooperative manner under this MOU to share relevant information and expertise to ensure their respective statutory mandates are fulfilled.
7. The Parties recognize that other agencies such as police and WorkSafeBC may also be engaged in concurrent investigations of an Incident.

#### **D. Communications**

8. Where practical and consistent with their respective mandates, the Parties will explore coordinated approaches to the release of:
  - (a) Information during an ongoing investigation; and
  - (b) Incident investigation reports and public communication of findings and recommendations.

#### **E. Investigations**

9. The Parties will in the course of their respective Investigations, endeavour to identify areas where their jurisdiction and mandates overlap. At these intersections, both Parties may benefit from being able to share expertise, as permitted by their respective legislation, and being able to jointly analyze information.
10. Where either Party becomes aware of an Incident that both Parties have the authority to investigate, they will notify the other Party immediately.
11. The Coroner can notify Technical Safety BC at [1-866-566-7233](tel:1-866-566-7233) (select menu option #1 for their incident line). Technical Safety BC can notify the Coroners Service at 1-855-207-0637.
12. Technical Safety BC acknowledges that Section 5 of the *Coroners Act* prohibits moving, altering, or destroying:
  - (a) the body or its immediate environment in any way without authorization from a Coroner, and

- (b) any wreckage of a structure, vehicle, device, embankment or other thing in which the body is or may be located, or anything connected with the wreckage without authorization from a Coroner except to prevent loss of life or relieve human suffering.
13. The Coroners Service acknowledges that Section 36(2) of the *Safety Standards Act*, provides that:
    - (2) A person must not remove, disturb or interfere with anything in, on or about the place where the incident occurred except for the following:
      - (a) as is necessary to rescue a person, to prevent personal injury or death or to protect property;
      - (b) in accordance with the regulations;
      - (c) in accordance with the directions of a safety officer or safety manager.
  14. The Coroner will consult with Technical Safety BC to the extent practicable before authorizing removal of the body from the scene.
  15. The Parties will inform each other in a timely manner about critical issues or initiatives arising within their respective mandates which could have potential effects on either Parties' mandates, operations or stakeholders.
  16. The Parties acknowledge that their respective agencies maintain a power to seize Evidence in the course of their respective investigations into an Incident. The Parties agree to consult with each other prior to the seizure of any Evidence that may be relevant to both Parties in such a fashion that their legal responsibilities are respected.
  17. A Party who seizes scene Evidence, and intends to submit such Evidence to testing or analysis, will
    - (a) consult the other Party,
    - (b) notify the other Party of the time, place, and location of testing or analysis with sufficient advanced notice to enable representatives of the other Party to attend such testing or analysis should they wish to do so, and
    - (c) make reasonable efforts to ensure that the type and extent of testing or analysis does not adversely affect the other Party's ability to discharge its legal responsibilities.
  18. The Parties acknowledge that Technical Safety BC will generally not be permitted to attend a post-mortem examination of a body.
  19. The Parties acknowledge toxicology testing is done by standard means in either the Provincial Toxicology Centre or the RCMP Forensic Toxicology Centre, where attendance is not possible.
  20. The Parties acknowledge that each may also have obligations with respect to other investigative agencies regarding seizure and testing of Evidence or materials.

21. The Coroner may authorize a Technical Safety BC officer to seize evidence under Section 11(5) of the *Coroners Act* where the Coroner has reason to believe the Evidence is relevant to the Coroner's investigation.
22. If the Parties proceed with joint testing and analysis, the Parties will make written arrangements in advance regarding planning, scope, and the division of costs. Each Party may use the results of the testing for their own purposes.
23. If the Parties identify the need to hire an external technical expert that could provide expertise valuable to each Party, the Parties may hire the same expert to produce a report for both Parties. The Parties will make written arrangements in advance regarding the planning and scope of contracted services, drafting of reports, and use of the joint report and information contained therein for their own investigation and purposes.
24. Where one Party examines activities of the other Party unconnected to the ongoing investigation, Evidence shall be compelled directly and not obtained indirectly.
25. Technical Safety BC will notify the Coroners Service as soon as practicable where a Technical Safety BC investigation concerning a fatality is referred for prosecution.

#### **F. Exchange of Information and Final Reports**

26. Where both Parties investigate an Incident, the Parties will as much as possible, cooperate in exchanging investigative information and assist each other to the extent that is consistent with their authority. Both Parties may discuss investigative matters, including but not limited to, scope, facts, evidence, interpretation and planned activities to ensure both Parties' investigations benefit from shared expertise.
27. Technical Safety BC acknowledges that Coroners can only share information where it is necessary or incidental to the carrying out of an active Coroner investigation, inquest or review.
28. The Coroners Service may provide the final autopsy or toxicology report to Technical Safety BC as long as the Coroner determines that sharing the report with Technical Safety BC is necessary or incidental to the carrying out of an active Coroner investigation, inquest or review.
29. The Coroners Service acknowledges that Technical Safety BC may have an interest in certain Incidents that are investigated by the Coroners Service, although the investigation into the Incident is outside of the jurisdiction of Technical Safety BC. Technical Safety BC may make a request to the Coroners Service for information relating to such Incidents for the purpose of improving public safety of technical equipment, systems and railways.
30. Any other requests for information from the Coroner must be directed, in writing, to the Regional/Unit Director.
31. Technical Safety BC will promptly provide a copy of its final report of an Incident to the Coroners Service, pursuant to an order to seize under Section 11(1)(e) of the *Coroners Act*, which allows the Coroner to seize any records the Coroner has reason to believe are relevant to the investigation.

32. The Parties will obtain any third party documents directly from the source.
33. At the Coroners Service, Coroners, Management, and Coroners Service personnel will have access to information shared under this MOU.
34. At Technical Safety BC, Safety Officers and support staff will have access to information shared under this MOU.
35. The Parties recognize that, in some cases, ongoing law enforcement investigations by police or other agencies may delay the ability to share certain information designated by police or the law enforcement agency as Holdback until the law enforcement investigation is complete.
36. Any information exchanged between the Parties will be kept strictly confidential by the receiving Party except where disclosure is required by law. Any third-party requests for that information will be directed to the source.
37. The Parties further acknowledge that they are subject to the *Freedom of Information and Protection of Privacy Act* and that any exchange of information is subject to applicable legal obligations such as Section 63 of the *Coroners Act*.
38. The Parties will:
  - (a) Use one another's records and information solely for the purposes of investigations and inquests within their respective jurisdictions;
  - (b) Treat all records and information as confidential and not to be disclosed to third parties except with written consent, as part of an inquest proceeding or as otherwise required by law;
  - (c) Maintain appropriate records of the transmission, transfer and receipt of records and information;
  - (d) Limit access to records and information to employees who are legally bound to keep confidences;
  - (e) Notify the other of any application for production of records, summons, subpoena or requests made under Freedom of Information and Protection of Privacy Act, that will affect records or information of the other Party;
  - (f) Immediately inform each other of any unauthorized use or disclosure of records or information and take all reasonable steps to prevent further unauthorized disclosure; and
  - (g) Immediately notify the other if inaccurate or potentially unreliable records or information may have been provided or received and take all reasonable action to remedy the issue.
39. The Parties may refuse to disclose information that may be used as evidence in a legal proceeding until such time as the legal proceeding is concluded.

40. A Coroner will consult with Technical Safety BC about any proposed recommendation on matters that may fall under the mandate and jurisdiction of Technical Safety BC.
41. In cases that involved the sharing or discussion of Evidence, each party will discuss the findings and give the other Party a reasonable opportunity to provide input prior to publication.
42. Despite any joint efforts throughout an Incident investigation, the Parties maintain ownership over their respective investigations and investigation reports and may use them and their contents to fulfill their mandates.

#### **G. Dispute Resolution**

43. A dispute arising out of this MOU will be resolved jointly by the Deputy Chief Coroner and the Vice President of Technical Safety BC.

#### **H. Amendments and Termination**

44. Nothing in this MOU overrides any legal requirement that either party must fulfill under their governing legislation.
45. This MOU constitutes the entire agreement between the Parties. It supersedes all previous negotiations, communications, and other agreements between Technical Safety BC and the Coroners Service relating to matters addressed in it.
46. This MOU is made in good faith and in the spirit of cooperation. It is not legally binding and is not to be used in any legal or other proceedings.
47. The Parties remain independent and nothing in this MOU creates a partnership, agency, or joint venture between the Parties.
48. At any time, the Parties may agree to amend the terms of this MOU or add appendices to this MOU. Amendments to the MOU, including any appendices added, will be in writing, dated, and signed on behalf of the parties. Signed amendments will form a part of this MOU.
49. The Parties will review this MOU every five years and make amendments as necessary. This MOU will remain in effect until replaced or terminated.

50. Either Party can terminate this MOU by giving two months written notice of termination to the other Party. In addition, the Parties may mutually agree in writing to terminate this MOU at any time.

This MOU is effective as of September 15, 2021



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Catherine Roome  
President & LEO  
British Columbia Safety Authority

September 1, 2021

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Date



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Lisa Lapointe  
Chief Coroner  
British Columbia Coroners Service

August 26, 2021

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Date