

IF A TREE FALLS IN THE WOODS AND NO ONE IS AROUND  
TO HEAR IT...



REVIEW OF FAILURES LEADING TO KHAIRA SITUATION

July 2011



**BC Forest Safety Council**  
*Unsafe is Unacceptable*

## Preface

### **About the Forest Safety Ombudsman**

The Office of the Forest Safety Ombudsman was established in 2006 to enhance safety in the BC forest sector by becoming a safe, confidential and persuasive agent for raising and reviewing safety concerns throughout the sector and facilitating impartial and timely resolution of safety issues. The Forest Safety Ombudsman is appointed and funded by the forest industry through the BC Forest Safety Council and has a mandate to investigate safety issues and recommend the best means to address them. The Ombudsman will use review, recommendation, mediation and conciliation where necessary. The Ombudsman will adhere to the principles of impartiality, fair and timely process, confidentiality and coordination of action given the number of other organizations involved in safety in British Columbia. In particular, the Ombudsman will work closely with WorkSafeBC whose mandate is to enhance safety in British Columbia.

The Ombudsman is an independent and impartial advisory voice that carries out all the responsibilities of the Ombudsman while also providing feedback to the BCFSC on trends, issues, policies and practices.

### **The BC Forest Safety Council**

The BC Forest Safety Council was created by the forest industry to eliminate fatalities and serious injuries by: promoting cultural change to ensure that safety is treated as an overriding priority, promoting a safety-conscious legal regime, developing a competent and confident workforce, encouraging SAFE companies to have functioning safety programs and encouraging and rewarding safe conduct.

All the organizations and associations that represent the forest sector are members of the BC Forest Safety Council: the regional logging associations, associations representing major licencees and small tenure holders, organized labour, the silviculture sector, independent fallers and key government agencies.

The Council is funded through industry contributions through WorkSafeBC assessments, contributions from diverse sources for specific programs and fees for services.

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More information on the Council and the Forest Ombudsman is available on the Council's website:  
[www.bcforestsafe.org](http://www.bcforestsafe.org).

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# Executive Summary

On July 21, 2010, a group of recreational boaters spotted a fire in a wooded area near Golden, BC. Because there was a camp fire ban in effect at the time, the boaters reported the fire to the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO), who in turn dispatched personnel to investigate. When the government officials arrived at the Khaira campsite where the fire had been spotted, they were greeted by a crew of silviculture workers. Nearly all the workers were black males, and as new Canadians, spoke little or no English. One of the workers was visibly injured and bleeding from the head. All the workers expressed relief and gratitude to the officials for arriving at the camp, and some said that they “hadn’t eaten in two days.”

The Khaira situation, which is clearly intolerable on many levels, raises questions about the safety of workers in the silviculture industry in BC and leads one to ask the following question: How, despite all of the evidence that appears to have existed and been documented by the various regulatory bodies against Khaira leading up to the incident in Golden, could a workplace contracted by the MFLNRO deteriorate to the point where workers needed to be rescued?

Clearly the system had failed not only the Khaira workers but also all British Columbians who rely on government to maintain a certain level of safety in the workplace. When workers are required to engage in heavy manual labour, they need to live in safe conditions that ensure they have adequate rest and nutrition. Otherwise, they risk injury to themselves and to others.

This report focuses on five key areas that contributed to the system “failure” which led to the incident in Golden. It explains the shortcomings and provides recommendations on how to improve each of those components: Notification, Enforcement, Contract Qualification Process, Training and Proposal versus Tender Approach.

## **Notification:**

Over the course of interviews with various government agencies, it became clear that lack of notification regarding the establishment and operation of campsites is not uncommon in the forest industry, and certainly not unique to the Khaira situation. Specifically, some of the problems that were identified include:

- Erratic and inconsistent notification by operators of where and when campsites are established;
- Inconsistent enforcement of the requirement to notify;
- No formal process to share information between agencies, organizations or the public about the location of known campsites;
- Lack of details regarding campsites (exact dates and geographic locations) even when notification is received;
- Different standards for notification of camps located on private campgrounds versus camps located on Crown land; and
- Lack of in-field auditing to ensure that operators comply with existing regulations (including notification), despite the fact that some industry certifications require compliance.

Proper notification is the critical first step in being able to ensure worker safety is a priority. Government agencies need to ensure that as a condition of any contract that is awarded that accurate and timely notification occurs; that information provided includes detailed camp location and operating timelines; and that this information is openly communicated to all the parties that require access to it.

**Enforcement:**

The issues surrounding camp notification were the starting point of the system failure in the Khaira situation. The enforcement of the notification requirement and other regulations was also found to be lacking and in need of improvement. There are a number of government agencies responsible for enforcing regulations around camps including: the Ministry of Health, Ministry of Labour, Ministry of Environment, MFLNRO, and WorkSafeBC. Each agency approaches enforcement differently. Some adhere to a complaints-driven approach, which means that enforcement does not occur until after an incident has taken place. Others follow an education over enforcement approach, which may have long-term merit but does potentially increase opportunities for abuse. Finally, some agencies rely on random inspections to enforce regulations, but without accurate information about camp location and timelines for camp operation, the effectiveness of this type of enforcement is also limited. The BC Forest Safety Council (BCFSC) has a “Safe Company” certification process that outlines standards that certified companies are required to meet.

There is also a distinct difference between how the private (industry) and public sector approach enforcement. In the private sector, there is usually a single entity that monitors the full range of obligations a contractor must comply with. In the public sector, various ministries and organizations appear to operate in silos and are focused solely on their own specific mandate. This means that there is no one person or group that effectively “takes the lead” to act on the cumulative information gathered during camp inspections.

Every organization has a role to play in improving the enforcement regime that supports the efforts to improve worker and workplace safety. The 2008 Auditor General’s report speaks to many of the issues that were raised in this review. Government agencies require a better coordination of information sharing and require investigation into the ability to put “more eyes on the ground” through a practical model of delegated authority for in-field inspections. The BCFSC needs to continue to improve their ongoing monitoring process for the Safe Companies program and industry associations like the Western Silviculture Contractors Association (WSCA) should take a serious look at establishing some form of professional standards for their membership.

**Contract Qualification Process:**

One of the areas that many groups identified as possibly contributing to the system failure in the Khaira situation is the current government process for awarding silviculture contracts. Specifically, the following issues were raised:

- Tracking the ownership and past performance of companies is difficult.
- There is not enough coordination and information-sharing between government agencies.
- The public sector seems to be more risk-averse and less able to make decisions that may be considered “unfair” to certain contractors.
- The role of industry associations in maintaining professional standards is not clear.
- There is inadequate in-field verification of safe certified companies.

Government may want to consider instituting some practice of contract qualification in certain cases. A contract qualification process would allow government to conduct comprehensive searches of companies. A comprehensive search might ferret out contractors that may have had problems in the past and provide a clear and transparent process to explain the obligations and requirements that any contractor must meet. It may also make sense for government agencies to compile and maintain a database of contractors that outlines any past performance issues and ensures that they are “Safe Certified” companies with certification at the appropriate levels.

**Training:**

One of the issues that was identified as contributing to the system failure in the Khaira situation was the lack of job-specific training and awareness these workers had of their legal rights. Although there is a requirement for employers to ensure employees are trained, the lack of an industry wide standard program was an issue in the Khaira situation. When a worker begins a new job in any occupation, he or she is required to have a basic level of understanding of the work they are expected to perform. Most industrial sectors have developed courses that are designed to provide new workers with the information and basic skills required to perform jobs safely.

To be practical, job-specific training needs to be structured in such a way that it can be easily delivered through a wide variety of formats and venues. To be effective, such a program would need to be mandatory and require sign-off by both the employee and employer acknowledging that they have completed and understood the training received.

**Proposal versus Tender Approach:**

The most common practice for awarding government contracts is through a competitive tendering process. This system is an open bidding approach that focuses mainly on a low bid model where cost is the primary consideration in awarding a contract. Some government contracts are awarded through a proposal-driven model. A proposal driven model is especially valuable where the work entails difficult or dangerous conditions as it allows prospective proponents to develop innovative plans to achieve contract objectives while continuing to improve safety conditions for workers and the public.

**Summary:**

All participants interviewed as part of compiling this report shared the perspective that the Khaira situation was totally unacceptable and expressed a sincere desire to work towards finding practical solutions. The Khaira situation has revealed a number of gaps within the industry. It is my view that the most effective use of time and resources to deter other system abusers is to develop systems at the front-end of the contracting process, such as:

- ✦ Establish a useful and accurate camp notification system;
- ✦ Establish contract qualification criteria so that projects are not just awarded to the lowest bidder;
- ✦ Find a practical method that allows some form of delegated in-field inspection between agencies and organizations;
- ✦ Ensure that at the onset of awarding any contract, workers and companies have the skill-set and expertise to perform the job required; and
- ✦ Ensure that workers have a comprehensive understanding of their legal rights and require these rights are clearly posted in the workplace, in a form that is understood by workers, and that this requirement be part of every in-field inspection of a worksite.

The review of the Khaira situation revealed a number of other conditions that, individually, fall outside of the mandate of the BC Forest Safety Ombudsman. However, each of those other conditions, had at their core, a significant impact on the safety of the workers. When workers are put in an environment where living conditions are substandard, working conditions abusive, wages unpaid, access to transportation limited, and language or cultural barriers exist - those workers are not safe.

What makes the Khaira situation particularly disturbing is that throughout the operation of their camps, there was significant evidence - from a number of sources - that there were unacceptable, substandard, and unsafe conditions in

the workplace, and no significant action was taken to stop the operations. It is an inescapable fact that the Khaira camps were allowed to operate unsafely for too long and that the system failed those workers.

This report consists of 13 detailed recommendations to a variety of ministries, agencies and organizations to fill some of the gaps that currently exist and hopefully reduces the opportunity for future Khaira situations from occurring.

# Introduction

## **Background:**

On July 21, 2010, a group of recreational boaters spotted a fire in a wooded area near Golden, BC. Because there was a camp fire ban in effect at the time, the boaters reported the fire to the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO), who in turn dispatched personnel to investigate. When the government officials arrived at the campsite where the fire had been spotted, they were greeted by a crew of silviculture workers. Nearly all the workers were black males, and as new Canadians, spoke little or no English. One of the workers was visibly injured and bleeding from the head. All the workers expressed relief and gratitude to the officials for arriving at the camp, stating that they “hadn’t eaten in two days.”

The workers claimed they were not being fed because they had stopped working in protest over nonpayment of their wages. Because of the dire situation of the crew and campsite, RCMP and Social Services officials were immediately called in for back-up. The workers were evacuated to a church in Golden where they were provided with food, accommodation and eventually assistance with moving back into the community at large. During their time at the church, workers provided police statements outlining serious allegations concerning substandard living conditions at the camp, physical abuse and other workplace violations.

Over the next few months, the deplorable conditions that these workers were subjected to led to a number of investigations that uncovered a litany of issues, complaints, and regulatory violations - not just in Golden but also in previous camp operations run by the contractor, Khaira, who was responsible for the operation in Golden. These violations had been documented by WorkSafeBC, Ministry of Health, MFLNRO, Ministry of Labour and the BC Forest Safety Council. All of these allegations eventually led MFLNRO to bar Khaira from bidding on government contracts.

At the time this report is being written, there is an ongoing investigation by the RCMP into the death of a worker in a campsite operated by Khaira.

## **Reasons for Report:**

When workers are expected to engage in heavy manual labour, they need to live in safe conditions that ensure they have adequate rest and nutrition. Otherwise, they risk injury to themselves and others.

The Khaira incident raises many questions about the safety of camps and workers in the silviculture industry. Specifically, one has to ask the following question: how, despite all the evidence against Khaira that appears to have existed and been documented by the various regulatory bodies leading up to the incident in Golden, could a workplace operated by a company and contracted by the MFLNRO deteriorate to the point where the workers needed to be rescued? Clearly, the system had failed not only the Khaira workers but also failed all British Columbians who rely on our institutions to maintain standards in the workplace that are acceptable and conducive to improving safety.

This report examines those system failures and proposes recommendations to improve each component so that the situation in Golden can never happen again.

To be clear, the report is not an investigation of Khaira, nor is it an investigation into the silviculture industry which has made significant gains in terms of professionalizing their industry and improving safety for workers, contractors

and the public as a whole. It is a review of the system that ultimately failed the workers who were employed by Khaira because ultimately, that system did not keep those individuals safe.

**Organization of Report:**

This report focuses on five key areas that contributed to the system “failure” which led to the incident in Golden. It explains the shortcomings and provides recommendations on how to improve each of those components:

1. Notification
2. Enforcement
3. Pre-Qualification
4. Training
5. Proposal versus Tender Approach

The majority of people that were interviewed for this report identified at least one of these components as being a major contributing factor into the system failure that led to the Khaira situation.

**Thank You:**

I would like to personally thank all the individuals that spoke with the Ombudsman Office and contributed to the findings in this report. Every person we spoke to took the time to talk in detail to us about their knowledge of the events surrounding the Khaira situation, and offered thoughts and recommendations on how to ensure that such an unsafe environment does not happen again.

**“We probably receive less than 20 per cent of the notifications of where these camps are located and of that 20 per cent, 100 per cent of the information provided is relatively useless.”**

## Notification

Through WorkSafeBC and MFLNRO regulations, forestry contractors are required to notify government agencies when they set up camp operations. This notification allows regulators to inspect camps to ensure they meet basic safety standards and requirements. This did not appear to have happened in Golden nor in other camps operated by Khaira. The Golden camp run by Khaira was only discovered because a group of recreational boaters phoned in a forest fire complaint. If that call had not been made, the camp and its unsafe working conditions may not have been uncovered.

Over the course of interviews with various government agencies, it became clear that lack of notification is not uncommon in the forest industry, and certainly not unique to the camp run by Khaira. In fact, virtually every ministry, association or organization that was interviewed said they had no process of accurately knowing where or when camps are established. Part of the problem lies in the fact that most camps are only set-up for a short period of time, making it difficult to track. So even if agencies wanted to inspect a camp, it is unlikely that there would be any reliable information in place for them to know where camps are exactly located, or when they are in operation.

Some of the gaps in the current system that were identified include:

- ◆ Notification by operators regarding where and when they establish campsites is erratic and inconsistent across the province.
- ◆ Enforcement of the requirement to notify is equally inconsistent across the province and across agencies.
- ◆ In cases where camp location information is available, there is no formal process for sharing the information between agencies, organizations or with the public.
- ◆ In many cases where notification is received, the information provided lacks any specific detail regarding exact geographic location and dates of operation of the camps.
- ◆ The notification requirements differ for camps located on private campgrounds versus camps located on crown lands.
- ◆ Some industry certifications require operators to comply with all existing regulations (including notification) but there appears to be very little in-field auditing in place to ensure operators are in compliance.

In short, requirements do exist that camp operators notify appropriate agencies but these requirements are currently very loose, poorly defined, not transparent and inaccessible. In many cases the information received is not relevant and there is no process for circulating the information for those that may require access. Because the starting point of any process begins with having reliable and accurate information at the front-end, this is the one specific area that is critical when addressing the larger issue of meeting camp standards and worker safety. Further, with today’s easy access to internet and GPS mapping systems, organizations should have in place a practical process to readily communicate and exchange information regarding campsite location and operation dates.

**Recommendations:**

1. MFLNRO review its current notification requirements for camp operators with respect to the level of detail required to be provided. MFLNRO look particularly at the specific information required for camp geographic coordinates and calendar dates for setup and operation.
2. MFLNRO develop a system for making camp operator information available and accessible to other agencies, organizations and the public.
3. MFLNRO require as a “condition” of any government contract awarded that operators report exact camp location and operating timelines before commencing any camp operations, regardless of whether a camp is set-up on private or crown land. That this information be reported and available to all agencies and organizations at least 48 hours prior to the set-up of any camp operation.

**“It became clear that the regulations of the silviculture industry, and the enforcement of these regulations, had completely failed not only these workers but all British Columbians”**

## Enforcement

The issues surrounding camp notification were the starting point of the system failure in the Khaira situation. The enforcement of the notification requirement and other regulations was also found to be lacking and in need of improvement.

There are a number of government agencies responsible for enforcing regulations around camps, including: the Ministry of Health, Ministry of Labour, Ministry of Environment, MFLNOR, and WorkSafeBC. Each agency approaches enforcement differently. Some adhere to a complaints-driven approach, which means that enforcement does not occur until an incident has taken place. Others follow an education over enforcement approach, which may have long-term merit but potentially increases opportunities for abuse. Finally, some agencies rely on random in-field inspections to enforce regulations, but without accurate information about camp location and operating timelines, the effectiveness of this type of enforcement is also limited.

Industry associations can also play a role in enforcing regulations and ensuring companies meet and maintain certain standards. For example, the BC Forest Safety Council (BCFSC) has a “Safe Company” certification process that outlines standards that certified companies are required to meet. However, the problems with that certification process at the time of the Khaira situation were: there did not appear to be a substantive in-field verification system in place to ensure companies were certified at the appropriate levels or to verify that they were in compliance with other requirements of their certification. Nor was there a process in place for companies to lose their certification.

The Western Silviculture Contractors Association (WSCA) could also play a role in enforcing standards. The WSCA is more than an advocacy association; it also has significant involvement in the development of training programs and assists in establishing standards for its membership. The WSCA may want to consider playing a more active role in driving a code of conduct for its membership.

### **Summary of Observations:**

There are a number of observations related to enforcement that our office made as we conducted this review. There is a distinct difference between how the private (industry) and public sector approach enforcement. In the private sector, there appears to be more flexibility for organizations to act against known “bad” operators because enforcement is perceived as a risk management issue and something that needs to be dealt with in order to maintain the integrity of the industry. In contrast, the public sector appears to be more risk averse and less willing to act decisively against bad operators.

In the private sector, there is often a single entity who monitors the full range of obligations a contractor must comply with. In the public sector, various ministries and organizations almost operate in “silos” and are focused solely on their own specific mandates. This means that there is no one person or one group that effectively “takes the lead” to act on the cumulative information gathered during camp inspections.

**Summary:**

Our office is of the view that the current regulatory environment generally contains the necessary measures to ensure that a Khaira type of situation does not occur. Thus from our perspective, it is the lack of consistent and frequent in-field inspections that helped create the Khaira situation rather than a lack of necessary regulations or enforcement provisions.

While some agencies suggested that having more “eyes on the ground” to enforce regulations would help improve the system, almost everyone agreed that this alone would not solve the problem. Instead, another option could be to introduce some form of a delegated authority model which allows one organization to represent multiple agencies - enabling one individual or group to take the lead in enforcing regulations. A form of delegated authority would require much more information-sharing between all affected organizations and would allow for increased coordination.

Because a formal delegated authority process would require legislative changes that could take a significant amount of time to put in place, a more practical alternative might be to develop interagency working groups mandated to develop guidelines, checklists and protocols that allows for some process for sharing in-field inspections. A practical and effective delegated authority model would combine the total inspection capacities of all agencies into a single team approach - effectively increasing the number of eyes on the ground.

Determining what level of enforcement is most appropriate for situations such as Khaira and others will depend heavily on what changes organizations and government are willing to adopt from this review. A clearly communicated notification process, some process for contract qualification, stronger vetting processes or the ability to delegate some level of authority could all contribute to the establishment of a practical enforcement regime.

**Other:**

In 2008, BC’s Auditor General released the report, *Preventing Fatalities and Serious Injuries in BC Forests: Progress Needed*. This report made a number of recommendations including:

- Establishing a single lead ministry to deal with closing jurisdictional gaps;
- Putting in place mandatory pre-qualification requirements for all firms; and
- Requiring mandatory training that is relative to known risks.

This report provided a number of other recommendations whose current status is unclear. The fact that the Khaira situation occurred after these recommendations were released prompts an opportunity to revisit this report as many of the issues referenced in that document have also been identified in this review.

**Recommendations:**

4. The Province, WorkSafeBC, BC Forest Safety Council form a working group to investigate the potential to establish a practical shared delegated authority model for in-field inspections.
5. BC Forest Safety Council continue to enhance their monitoring, auditing and in-field inspecting processes to ensure the integrity of the Safe Companies certification.
6. The Province establish and identify a lead ministry to coordinate information sharing between government ministries, agencies and other relevant groups.
7. The provincial government considers establishing an advisory committee including representatives from government, employer and labour organizations to review progress to date on the 2008 Auditor General's report and make recommendations for improving safety outcomes.

**“The more rigorous the contract qualification specifications at the front-end, the less likely to have problems at the back-end.”**

## Contract Qualification Process

One of the areas that many groups identified as being problematic and that may have contributed to the system failure in the Khaira situation is the current government process for awarding silviculture contracts.

Specifically, interviewees noted the following issues:

- Tracking the ownership and past performance of companies is difficult.
- There is not enough coordination and information-sharing between government agencies.
- The public sector seems to be more risk averse and less able to make decisions that may be considered “unfair” to certain contractors.
- The role of industry associations in maintaining professional standards is not clear.
- There is inadequate auditing of safe certified companies.
- Contract qualification of contractors is not standard practice.

**Limited Tracking:** many agencies observed that there is no process in place to track the ownership of companies that bid on government contracts. This is a problem when companies that have run into difficulties in the past with safety, performance, or cost issues merely reincorporate under a new name and bid on government projects without any repercussions. Indeed, a new reforestation company with the same business address as Khaira has surfaced in the government system, despite the fact MFLNRO has revoked Khaira’s ability to bid for government contracts.

Along with the issues associated with tracking past performance, there does not appear to be any inter-government database to track contractors. As a result, government agencies rely on internal communication to obtain any historical information concerning past contractor performance. In many cases, contract work awarded by one ministry or even under one program is not readily accessible by staff from other ministries or programs.

**Lack of coordination:** BC Timber Sales (BCTS) has, as part of their requirements for evaluating bids proposals, the responsibility to evaluate other criteria other than price. It appears that little emphasis was put on the other criteria and no single body within government was monitoring contracts, and the multiple issues that may arise about a specific contractor (i.e. safety, performance, costing, etc.). None of these issues were dealt with as a whole, and so the entire picture about any one contractor is never clear. This is different from how the private sector manages its contracts. In the private sector (i.e. licensees) there is typically one entity responsible for managing all the components of a contract. This provides for a more rigorous evaluation of contractors that takes into account every aspect of performance from safety to scheduling, regulatory compliance and cost. Moreover, because there is no one group within government that brings together information, the cumulative impact of poor performance is not easily dealt with. So in the Khaira situation, even though there were multiple indiscretions across a range of issues, individually each indiscretion was not severe enough to warrant shutting down the operation. If issues had been looked at more holistically, it is possible that action may have occurred sooner. More disturbing is there was significant evidence of the conditions that existed for these workers that was ignored, discounted or passed on to other agencies which allowed for the situation to continue.

**Risk averse:** because of its requirement to always appear “fair” and because of the lack of coordination and information-sharing among agencies, government seems less willing and able than the private sector to be bold and decisive when managing contracts. For example, in the private sector, it is common for companies to have a preferred list of contractors and/or a list of ‘less desirable’ contractors. In government, this practice generally does not exist and there is an inherent unwillingness to take action such as disqualifying contractors from the bidding process because of a fear of legal repercussions. Similarly, government appears more bound to consider cost issues when awarding contracts even though other issues – such as safety – may in the end be more important.

**Unclear role for industry associations and professional reliance:** It is not clear what role industry associations such as the Western Silviculture Contractors Association (WSCA) or the BC Forest Safety Council play in ensuring contractors meet their obligations. Similarly, it is difficult to determine whether government places any significant value on membership in professional associations and organizations when it evaluates and awards contracts.

Organizations such as the WSCA have a vested interest in ensuring that its members adhere to a certain level of professional standard. Because the WSCA lobbies on behalf of its members and develops programs and courses to enhance safety and professionalism of its members, it could benefit from establishing a professional reliance model that outlines principles of conduct for all its members. Such a model would be an important component to enhancing the credibility of the organization, and it would also establish another layer of oversight that would become a barrier for individuals or companies that attempt to operate in an inappropriate manner.

There are varying degrees along the spectrum of a professional reliance ranging from formal certification to more informal processes requiring much less onerous standards. The degree and depth of professional reliance that WSCA could develop would need to be balanced against the resources required to monitor and enforce that model, and its value would also need to be weighed according to the recognition it receives from other groups. For example, if the provincial government recognized WSCA membership as one criteria for qualification of contractors, there would be significant incentive for silviculture contractors to acquire this level of designation and to maintain the standards required by the association.

**No way to remove safe certified companies:** Khaira was a Safe Certified company under BCFSC’s “Safe Companies” initiative. As a safe certified company, Khaira had the “right” to bid on MFLNRO contracts that require safe certification for all silviculture contractors.

Under the Safe Companies certification, companies are required to register in the appropriate category (size of operation) and conduct their businesses in full compliance of the regulatory frameworks in which they operate. Khaira had certified itself as a SEABASE company, an audit designation for small employers (6-19 employees); however Khaira’s operations were much larger and should have required BASE designation (20 or more employees) requiring a much more stringent safety audit. At the time of this Khaira incident, the BCFSC had neither a formal process for removing a company’s Safe Company certification or an effective in-field verification system to ensure companies had registered at the appropriate level.

As a result of the Khaira situation, BCFSC introduced criteria that allows it to remove the “Safe Companies” Certification, and it has also introduced a number of administrative tools for conducting ongoing random audits of Safe Certified companies. While these steps are indeed positive, there continues to be a need to ensure that companies are abiding strictly to the requirements of the Safe Company certification and that they are registered and operating at the appropriate level (size) of certification.

**Contract Qualification is a standard practice:** In the private sector, it is very common for companies to be required to “qualify” before they can bid on work. The purpose of contract qualification is two-fold:

- I. To ensure that operators have systems in place to meet obligations related to safety, quality, schedule and costs (background research is often conducted to determine past safety performance, work experience, and ownership); and
- II. To allow contractors to acquire a clear understanding of what is expected of them.

In the private sector, contract qualification criteria vary in level of difficulty and are usually balanced against a desire to encourage new entrants into the industry. Typically, the more stringent a contract qualification requirement the less likely there is to be problems at the back end with individual companies.

Some of the advantages of establishing a contract qualification process for companies are:

- It provides an opportunity to conduct a comprehensive search of company ownership. This prevents companies who run into compliance difficulties from simply registering their corporation under a new business name and bidding on work under that new entity.
- It provides an opportunity to compile and maintain a database of contractors and their past performance. This database could be shared among government agencies and ministries.
- It provides a clear and transparent process to explain the obligations and requirements that any company will have to meet in order to remain on the contract qualification list.
- It provides an opportunity to verify that companies who are “Safe Certified” are registered and certified at the appropriate levels.

It will make ministry staff jobs much easier by:

- Making it less onerous to review companies and bids;
- Eliminating the poor performers early on in the process;
- Focusing on contract qualification/ education/ prevention; and
- Reducing the need for increased enforcement.

**Recommendations:**

8. MFLNRO investigate the establishment of a contract qualification process for silviculture contractors that bid on government contracts. Any contract qualification process should:
  - Be flexible enough to continue to encourage new entrants into the industry;
  - Consider the regulatory requirements of other provincial ministries; and
  - Provide recognition of the BCFSC Safe Company certification program.
9. Western Silviculture Contractors Association investigate the establishment of professional standards code for its membership. Development of code should be done in consultation with the BC Forest Safety Council and MFLNRO to ensure those organizations can provide a value that is included in the MFLNRO contract qualification process and BCFSC Safe Company certification.
10. BCFSC continue to expand the monitoring and auditing of Safe Companies to ensure they are operating within the terms of their certification.

**“An educated workforce is best prepared and equipped to manage their workplace in a way that enhances safety for themselves and others.”**

## Training

Although there is a requirement for employers to ensure employees are trained, the lack of an industry wide standard program was certainly apparent in the Khaira situation. When a worker begins a new job in any occupation, he or she is required to have a basic level of understanding of the work they are expected to perform, and most industrial sectors have developed courses that are designed to provide new workers with the information and basic skills required to perform jobs safely. For example, the BCFSC has developed a number of courses related to jobs in the Forest sector, such as Faller Certification, Supervisor Training, and ATV Operator Training.

A worker is also entitled to clearly understand his or her rights pertaining to personal safety, safety committees, camp standards, and employment standards, and there are also requirements to visibly post regulations pertaining to workers’ rights in a language they can understand. Any inspections undertaken of a camp facility, regardless of the agency involved, should include inspecting to ensure that information is appropriately posted.

One way to minimize the potential for Khaira-type situations from occurring in the future might be to require that all new employees participate and complete an initial basic silviculture training program. The training should include specific skills training required for silviculture work as well as sections that deal specifically with employee rights and camp standards.

For it to be practical, it would be necessary that this specific training be structured in such a way that it can be easily delivered through a wide variety of formats, including public and private post-secondary institutions, employers themselves through a “train-the-trainer” program, or by way of industry associations such as BCFSC or WSCA. To be effective, such a program must be mandatory and require sign-off by both the employee and employer acknowledging that they have completed and understood the training received.

### **Recommendations:**

11. BC Forest Safety Council and Western Silviculture Contractors Association in conjunction with WorkSafeBC, develop a “Silviculture Workers Training Program” that is the minimum requirement for any new employee working in the silviculture sector.
12. All agencies and organizations as part of their in-field inspections of camp facilities to ensure, that as part of their responsibility, they include a visual inspection to ensure all pertinent employee information is posted in a manner and location accessible by all workers.

## Tender versus Proposal Driven Models

The most common practice for awarding government contracts is through a competitive tendering process. This system is an open bidding process that focuses mainly on a low bid model where cost is the primary consideration in awarding contracts. There are a number of other criteria that are considered, but generally there needs to be a significant default in one or more of the other areas in order for the lowest bid to be rejected.

Other government contracts are awarded through a proposal-driven model. In this model, proponents submit proposals outlining exactly how they plan to execute the project. The advantage of this system is that it requires prospective proponents to describe, in detail, the methods planned in order to execute the contract job. The process also requires a dialogue to take place between the ministry and the proponents, which provides a clear opportunity for government to explore the corporate and work history of the proponent and clearly communicate all the requirements and obligations that are associated with the contract. A proposal-driven model is especially valuable where the work entails difficult or dangerous conditions. It allows proponents to develop innovative plans to achieve contract objectives while continuing to improve safety conditions for workers and the public.

While proposal-driven methods have been criticized for not ensuring best value (low-bid), from a safety perspective, they are often preferable to competitive tendering. This is because proposal-driven models allow proponents to gain value from describing innovative approaches to complex problems (rather than always being solely focused on cost), and because it also encourages more interaction between the contractor bidding on the work and government.

### **Recommendations:**

13. MFLNRO explore the option of expanding use of proposal-driven contracts, especially where working conditions present a high degree of difficulty or hazard.

## Conclusion

All the participants interviewed as part of compiling this report shared the perspective that the Khaira situation was totally unacceptable and expressed a sincere desire to work towards finding practical solutions. All individuals also agreed that simply increasing the number of in-field inspectors will not solve the problems that ultimately allowed the Khaira situation to occur.

Over the last year since the Khaira situation was discovered, several ministries and agencies have conducted inter-agency examinations to look at many of the issues raised in this review. This report is not intended to replace or detract from those efforts, but instead intends to provide additional perspectives that compliment and support those initiatives. Some of the reviews and initiatives that government has undertaken after the Khaira situation include:

- MFLNRO updated and clarified its “Camp Standards and Employment Standards” policy. The changes contained in the documents regarding compliance with the Employment Standards Act and Camp Standards are now critical to contractor compliance with contractual and statutory requirements.
- The Ministry of Labour, Citizens Services has led the establishment of an interagency review group to examine safety and enforcement issues in the silviculture sector. This group is considering current practices and exploring opportunities to help ensure that circumstances such as those that led to the Khaira event do not happen again.

Some specific considerations are:

- Broader sharing within WSBC of contract awards;
- MFLNRO has established revised camp notification provisions requiring 72 hour advance notice with distributions of the notice to Health Authorities and WSBC;
- Notice of work is now provided to the Employment Standards Branch by MFLNRO; and
- BCTS has established a provincial website that allows the sharing of contract performance evaluations more readily.

WorkSafeBC completed its review of the Khaira situation, and identified a number of issues that contributed to the problem, including:

- Failure of Khaira to provide proper notification of camp locations and the failure of the system to track that lack of notification;
- The fact that Khaira had a track record of noncompliance in previous camps;
- The lack of enforcement by various agencies;
- The fact that the high level of mobility of Khaira’s camps made it easy to avoid inspections; and
- The inadequate communication within agencies.

The BC Forest Safety Council introduced an auditing process to monitor Safe Certified companies as well as established criteria by which companies may have their Safe Company certification revoked.

Our office supports the continued review of the Khaira situation by all involved bodies. It is our collective responsibility to work to establish protocols that prevent and minimize abuse of the system.

It is my view that the most effective use of time and resources to deter other system abusers is to develop systems at the front-end of the process, such as:

- Establish a useful and accurate work notification system;
- Establish contract qualification criteria so that contracts are not solely awarded to the lowest bidder;
- Find a practical method that will allow for some form of delegated authority during in-field inspection between agencies and organizations;
- Ensure that at the onset of awarding any contract, workers and companies have the skill set and expertise to perform the job required; and
- Ensure that workers have a comprehensive understanding of their legal rights.

Industry associations have an important role in ensuring that the businesses they represent are operating ethically. Likewise, industry certification organizations must be able to assure their members that the certification processes have a credible auditing process that promotes internal discipline and instills public confidence in the certification process.

The review of the Khaira situation revealed a number of other conditions that, individually, fall outside of the mandate of the BC Forest Safety Ombudsman. However, each of those other conditions, had at their core, a significant impact on the safety of the workers. When workers are put in an environment where living conditions are substandard, working conditions abusive, wages unpaid, access to transportation limited, and language or cultural barriers exist - those workers are not safe, and that is a matter of concern for the BCFS Ombudsman.

Within the forest sector, there was an economic imbalance of power between sectors that created a barrier to safety, and this imbalance contributed to the industry decision to establish the Office of the BCFS Ombudsman. Clearly, the economic imbalance in the Khaira situation forced workers to work within a structure that exposed them, their co-workers, and the public to unsafe conditions, and if left unchecked, that economic imbalance could lead to safety barriers industry-wide.

What makes the Khaira situation particularly disturbing is that throughout the operation of their camps, there was significant evidence - from a number of sources - that there were unacceptable, substandard, and unsafe conditions in the workplace, and no significant action was taken to stop the operations. There were some in-field inspections of the camp and violations noted, but there was insufficient follow-up and no subsequent on-site verification to ensure that those violations had been remedied. It is an inescapable fact that the Khaira camps were allowed to operate unsafely for too long and that the system failed those workers.

This report identifies some of the system gaps that allowed the Khaira situation to occur. Along with addressing those gaps, it is essential that agencies work together in a cooperative way and that clear accountabilities are established so that the safety of workers becomes a collective responsibility. Otherwise, there is a risk that we will see more situations like Khaira, not less.



Roger Harris  
BC Forest Safety Ombudsman

July 2011

# Recommendations Summary

## Notification

1. MFLNRO review its current notification requirements for camp operators with respect to the level of detail required to be provided. MFLNRO look particularly at the specific information required for camp geographic coordinates and calendar dates for setup and operation.
2. MFLNRO develop a system for making camp operator information available and accessible to other agencies, organizations and the public.
3. MFLNRO require as a “condition” of any government contract awarded that operators report exact camp location and operating timelines before commencing any camp operations, regardless of whether a camp is set-up on private or crown land. That this information be reported and available to all agencies and organizations at least 48 hours prior to the set-up of any camp operation.

## Enforcement

4. The Province, WorkSafeBC, BC Forest Safety Council form a working group to investigate the potential to establish a practical shared delegated authority model for in-field inspections.
5. BC Forest Safety Council continue to enhance their monitoring, auditing and in-field inspecting processes to ensure the integrity of the Safe Companies certification.
6. The Province establish and identify a lead ministry to coordinate information sharing between government ministries, agencies and other relevant groups.
7. The provincial government considers establishing an advisory committee including representatives from government, employer and labour organizations to review progress to date on the 2008 Auditor General’s report and make recommendations for improving safety outcomes.

## Contract Qualification Process

8. MFLNRO investigate the establishment of a contract qualification process for silviculture contractors that bid on government contracts. Any contract qualification process should:
  - Be flexible enough to continue to encourage new entrants into the industry;
  - Consider the regulatory requirements of other provincial ministries; and
  - Provide recognition of the BCFSC Safe Company certification program.
9. Western Silviculture Contractors Association investigate the establishment of professional standards code for its membership. Development of code should be done in consultation with the BC Forest Safety Council and MFLNRO to ensure those organizations can provide a value that is included in the MFLNRO contract qualification process and BCFSC Safe Company certification.

10. BCFSC continue to expand the monitoring and auditing of Safe Companies to ensure they are operating within the terms of their certification.

### **Training**

11. BC Forest Safety Council and Western Silviculture Contractors Association in conjunction with WorkSafeBC, develop a “Silviculture Workers Training Program” that is the minimum requirement for any new employee working in the silviculture sector.
12. All agencies and organizations as part of their in-field inspections of camp facilities to ensure, that as part of their responsibility, they include a visual inspection to ensure all pertinent employee information is posted in a manner and location accessible by all workers.

### **Tender versus Proposal Driven Models**

13. MFLNRO explore the option of expanding use of proposal-driven contracts, especially where working conditions present a high degree of difficulty or hazard.

# BC Forest Safety Ombudsman

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**BC Forest Safety Council**  
*Unsafe is Unacceptable*