Port Transportation Association

Understanding Containers:

Definitions, Uses, Application, and Consequences for British Columbia for the Misinterpretation.

Executive Summary: *The definition of a container as it applies to trucking, the drayage industry, the Office of the British Columbia Container Trucking Commissioner,) the B.C. Container Trucking Act and Regulations, as well as the Federal CSC Act are explored in the following report in effort to bring clarity to those hauling containers within British Columbia.*

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For transparency and industry purposes, the PTA intends to distribute all content and post all meaningful dialogue on our website, to be viewed by both industry and the public.

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Definitions:

PTA: Port Transportation Association

OBCCTC: Office of the British Columbia Container Trucking Commissioner.

CSC: Convention for safe container of 1972 Canadian Act Safe Containers Convention Act (justice.gc.ca)

Laden: Loaded

Interchange or EIR Equipment Interchange Receipt: The Equipment Interchange Receipt, also known as the Container Interchange Receipt (CIR) is an inspection declaration form that is generated every time a container changes hands from one interchange point to another. The interchange points could be two container ships, terminals, container yards, or at any intermodal interchange point. Pertinent information regarding which party its transferring from and to who, the current owner or lessor, its condition, unit number, and to what shipment is contracted to move (booking number or BOL).

When a container has PASSED a visual inspection (performed by the receiving terminal) it will be marked on interchange, AV (available) or DM (damage). When a unit has been interchanged in as AV, the Shipping Line can then have the assurance that the unit is fit to load for Marine use. A unit that is marked DM will not be APPROVED for the Marine Transportation of goods. Containers that are either governed by the CSC with an ACEP (Approved **Continuous** Examination Program) stamp or an expiry still require inspections at INTERCHANGE not less that 30 months PER the CSC Act. Again, an interchange is what gives the suppler of the container assurance that it is fit for cargo and loading to a Marine Vessel and APPROVING it to do so. We want to be clear; APPROVAL is not infinite or without conditions. This applies to anything in the free world that would require APPROVAL. See below from the CSC ACT:

> **(c)** *All examinations performed under such a programme shall determine whether a container has any defects which could place any person in danger. They shall be performed in connection with a major repair, refurbishment, or on-hire/off-hire interchange and in no case less than once every 30 months.*

These descriptions and terms are common industry knowledge and can be elaborated upon or samples provided request to the PTA.

SOC: Shipper owned container.

Trucker: Truck driver

Carrier: Trucking Company administration

SCAC Code or Standard Carrier Alpha Code: Standard Carrier Alpha Code (full details on SCAC codes and their purposes can be found HERE)

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Purpose of Review

Commissioner MacInnes' introductions of what **NOW** defines a container (the CSC plate from factory) in the Landmark **Decision No. 04/2024 for Simard Westlink Inc is a clear demonstration of negligence.** It is the industry's opinion that **the trucking community (both licensed and lawfully unlicensed) is in peril now** for the simple reason that the Act's intentions have been changed. All companies are in a position of clearly breaking the Law. Competition in Canada is top of mind and the B.C. Trucking Commissioners fingerprints are all over an attempt to stifle lawful competition. This decision was in response to the Application for Reconsideration of **CTC Decision No. 09/2023**. This retroactive approach has the potential to **bankrupt** companies (ORDERING SIMARD TO AUDIT TO 2019 and PAY DRIVERS) and as well, now placing companies in a position that restricts them from competing in the Open Market.

Asserting that CSC plates **now** define a container, and compelling companies to audit their records dating back to 2019, and pay drivers as if the containers were Port containers, is an approach that should not be taken lightly.

This decision as ordered has consequences to Simard Westlink Inc to repay what could be into the Millions of dollars and places all licensed and not licensed carrier at risk of contravening the Law.

The responsible approach would have been to consult with the industry and work with the Ministry of Transportation to redefine the Term 'Container', in the ACT, if that is what the Commissioner felt was necessary for the Industry at this time.

Sanctioning companies for past work performed, for a definition that was **just now** altered without warning, or Industry and Legislative consultation, is cruel and unfair, regardless of what industry you may be in.

This decision and how it impacts the entire container trucking sector in B.C., not to mention carriers hauling containers from out of Province, must be studied, and carefully implemented to ensure that Carriers, truckers, and consumers of BRITISH COLUMBIA understand the rules of engagement and have the opportunity to adjust their rates.

We would like to be clear, if the Government wants to LOCK down the ENTIRE container trucking, we will abide.

Having said that, it's imperative that IF the Government chooses to go down this road, they are prepared to issue up to 500 additional truck tags and create a separate license system that does **NOT** have the requirements of the VFPA to only operate LATE MODEL trucks.

If this is not done, it will place Licensees in a two-tiered position, and they will clearly be unable to compete in the industry.

This report will examine the definitions of a Container along with uses, application in the industry, as well as consequences for British Columbia for the misinterpretation of the term 'Container' within the Container Trucking Act.

Interpretation of Container Trucking Act & Regulations

We have been informed by our members that the current Commissioner's interpretation of what constitutes a container as defined under the Act, is a stark difference from the Container Trucking Act, its Regulations, previous Commissioners' interpretations, decisions, Legislators, industry leaders, stakeholders, licensees, and the general trucking community's views.

A Review of Inception

At the time of the 2014 strike, Vince Ready physically rode with truckers to gain an understanding of what takes place in the Port Drayage Industry.

He rode with Truckers that picked up containers from the Port and delivered them to customers. He rode with Truckers who picked up containers from the Port and delivered them to rail, CN and CP.

There are 3 **distinctive** types of containers that travel via Rail.

1. Containers that originated **DIRECTLY** from a Vancouver or Eastern Port trucked to CN or CP.
2. A locally loaded container for Export to be railed to Montreal's Port or Eastern Port trucked to CN or CP.

3. DRP/Domestic movements, with product originating in Canada and delivering in Canada, traveling by rail inter-provincially. This is discussed further in the analysis of OBCCTC CNTL Decision No. 02-2019 on **page 10**.

   Containers used for DRP/Domestic purposes can be any of the 20, 40, 45, and 53-foot containers.

   UNDERSTANDING WHY CONTAINERS TRUCK FROM PORT TO RAIL

   Containers are transported from the Port to Rail in Vancouver, despite there being rail access at the Port terminals.

   The reason for this is that our rail infrastructure at the Ports cannot keep up with demand and containers dwell in rail blocks at the Port for extended periods of time. They unfortunately are delayed far too long to be loaded to a train for furtherance outside of the Province. (Please feel free to contact **VFPA** for clarification or further information)

   In an effort to bypass lengthy delays in movement, containers (**for a price**) can be picked up from the Port and delivered to CN and CP Intermodal yards. They will then be placed on priority trains to final destinations from there, cutting down days or weeks of delay.

   The PTA and the Industry are NOT contesting that these moves are in **direct** relation to a Marine Terminal movement and therefore should fall under the Rate Order.

What Vince Ready did not do was ride along with local domestic rail truckers to see what **their** jobs entail.

The reason for that was, it was not necessary. We were dealing with containers that were **DIRECTLY** related to our Ports. The issues of the 2014 work stoppage were DIRECTLY related to the Ports per Joint-Action-Plan, Hansard debates, the Container Trucking Act, its Regulations and every stakeholder in the entire industry.

What has unfolded since the Container Trucking Act was put into force is varying opinions by several Commissioners. It is clear by where we are today that the spirit and the intent of the Act has been lost, and decisions with some of the harshest consequences to businesses in terms of fines and license cancelations in Canada and North America, have been handed down by a single person (acting Commissioner). These decisions are based on cherry-picked interpretation of **their** predecessor's interpretation and **their** predecessor's interpretation of **their** predecessor's interpretation, only extracting interpretations that fit a current narrative and excluding interpretations that do not.

The Industry DOES not have a tribunal available and the only course of action for dispute is a lengthy, costly court battle. This is something that needs to be changed.

Understanding OBCCTC-Decision No. 04/2024

In the **Decision No. 04/2024 for Simard Westlink Inc** in response to the Application for Reconsideration of **CTC Decision No. 09/2023** (which is reviewed briefly on page 9 and again in depth on page 14), the Commissioner has not only maintained his original ruling that DRP 40' containers will be considered a "Container" and therefore under the jurisdiction of the OBCCTC to enforce the Rate Order, but that Simard must audit back to 2019 to adjust payroll accordingly.

This ruling to audit back to 2019, prior to this Commissioner's appointment in the role, and prior to any alteration or publication of a revised definition of 'Container' is unprecedented.

In coming to his decisions, the Commissioner used an analogy in his landmark Simard February 22, 2024 decision in Line 50 which reads as follows:

> ***By way of an analogy, if a resident of Coquitlam, BC purchases a vehicle on Vancouver Island and drives it back to her residence using BC Ferries and never brings that vehicle on BC Ferries again, those facts alone do not mean that the vehicle is not furnished or approved to go on a BC Ferries vessel. I find that the same approach should be taken when assessing whether a container is "furnished" or "approved" for the marine transportation of goods. The fact that***

a container is capable of being transported by an ocean carrier laden with goods means that it is a "container" under the Act.

What the Commissioner fails to understand is that vehicles (just like containers) DO NOT indefinitely have the right to board B.C. Ferries or vessels. (For that matter, neither do individuals, if found to be behaving outside of the Law while on board).

Going back to the vehicle analysis, if a Vehicle is found to be leaking diesel fuel or gas, a deckhand would **reject** that vehicle, rendering it NOT APPROVED.

The same is for Marine Containers. If a container HAS NOT been inspected at a Depot specified by a shipping line (inspected by personnel trained to note interchange with any damages notes) after it leaves their care and control, the shipping line CANNOT guarantee that the unit can be used for Marine Shipping, and they would be in violation of the CSC Act ACEP inspection criteria.

This would render the CSC plate INVALID.

The only assurance possible that would be acceptable (if you were relating the validity of a container based on a CSC) is if the unit was being moved under the Shipping Line's care and control with a Booking number or a BOL (bill of lading) number attached to its movement.

Using our own analogy to understand how the Commissioner's OBCCTC-Decision No. 04/2024, which backdates his new definition of Container and the consequences for Simard to 2019, we liken this to be similar to the LIQUOR CONTROL AND LICENSING ACT reinterpreting (without legislative approval) the Act to restrict Liquor Licensees from selling .5% beer while the free world continues to enjoy selling .5% beer for the simple reason that our Legislators have deemed .5% beer non-alcoholic.

Even if a Commissioner had the authority to re-define Liquor as stated in the Act, that Commissioner would not have the Authority to request that a Licensee not only refrain from selling .5% beer at a competitive price, but to sell it at full alcoholic beer price and **ORDER** the licensee to go back through their records to **2019** and pay the beer producers that sold them the .5% beer as if they purchased full alcoholic beer.

As defined in the Liquor Control Act, "**"liquor** means, subject to the regulations, beer, wine, spirits or other product that is intended for human consumption and that contains more than 1% alcohol by volume."

The industry is well aware of what a container is by definition with respect to the Container Trucking Act and have governed themselves accordingly over the past 10 years.

What is distorting the Commissioner's view of the Act is small snippets of Vince Ready's recommendations in which it is noted that containers have CSC plates; an unrelated Act and application that is reviewed in depth beginning on **page 17** of this report.

OBCCTC-Decision No. 02-2019 V. OBCCTC-Decision No. 09-2023

We draw your attention to OBCCTC-Decision No. 02-2019 V. OBCCTC-Decision No. 09-2023. Both decisions include audit on the movement of DRP containers, both completed by two different acting Commissioners.

In OBCCTC's Canadian National Transportations Ltd. Decision No. 02-2019, issued under Commissioner Crawford, the fact that CNTL performs various forms of on and off-dock trucking services is highlighted on page point 7 of the Decision, including subsection 7 point four as defined as follows:

- **Empty Marine Containers** - Marine containers that travel on rail to the CB Vancouver Intermodal Terminal (17560 104th Ave.), and are then emptied and delivered by truck to a private container storage yard.

The Decision then notes in point 13, under subsection point two that:

- The movement of these empty overseas containers was not considered to be container trucking serves for the purpose of the audit because it was determined that these moves were associated

with a movement of a container by rail and therefore were not off-dock moves directly related to regulated on-dock moves.

In OBCCTC's Simard Westlink Inc. Decision No. 02-2019, however, under point 42b has suggested that ALL containers "… moved in the Lower Mainland and locations "where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping" (other than marine terminals)", regardless of a related on-dock movement either to or from a Marine Terminal would now be considered an off-dock movement and subject to the Act and Regulations."

This previously unpublished change in direction on DRP and retail container movements, has now extended the Act and Regulations to encompass ALL container movements, including those completed in the non-regulated sector of trucking transportation that having nothing to do with the movement, both on and off-dock, of Port containers.

This clearly needs to stop. Canadians have the right to have a fulsome understating of the Laws of this Country and an opportunity to follow them. It is evident by Simard's assertions that the impugned containers are within the capacity of moving domestic goods. This assertion is backed up by the members of the PTA, past Commissioners investigations with other members, the Container Trucking Act itself, and our Legislators, as recorded in the Hansard Debates.

Simard ***was not*** in any way attempting to enrich themselves by reducing pay for drivers hauling containers with untagged trucks. They were simply conducting other container trucking business that does not have a direct connection with any Marine freight movements. They were simply competing with a large amount of other unlicensed carriers within the same realm of Domestic container deliveries.

Interpretation at Inception of the Act

This "other" container trucking business is discussed in detail with Ministers at the time, Hon. Stone and Minister Trevena, in two different conversations in the Legislature as found in the Hansard Debates during the creation of the Act and Regulations.

Full discussions and context can be found in this report Appendix, but we would like to draw specific attention to the following two quotes:

1) Hon. T. Stone in discussing Act Section 16: *The prescribed area, insofar as section 16(1) indicates here, is intended to reflect the Lower Mainland. I should point to again that at the highest level here, we're talking about ensuring that the commissioner's office and the license requirements and so forth capture all of the off-dock activity that is in direct association with the port.*
2) Hon. T. Stone in discussing Act Section 22*: This section, section (d), is here to, again, ensure that as the regulation is developed on rates, through the regulation we are as specific as we possibly can be as to what actually constitutes a move. As the member knows well, there are all kinds of moves - you know, truck moves in Metro Vancouver - that have noting whatsoever to do with the drayage sector. The moves never touch the port in any fashion. This section will ensure that there's maximum clarity on what actually constitutes a move within the drayage sector.*

In OBCCTC Decision No 09-2023 to Simard Westlink, the OBCCTC states one of the main principles of statutory interpretation as cited in *Canada (Minister of Citizenship & Immigration) c. Vavilov,* 2019 SCC 65 at para 117:

> **The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.**

It is feared that the current Commissioner's vision of the OBCCTC Office is massive expansion with duplication of several regulatory bodies already in force (see OBCCTC 2024 CTS Licence Reform Purposed Changes).

Two significant Supreme Court rulings from the 1990s have opened the door to using Hansard Debates to divine a parliament's intent in court cases which challenge understandings of laws (R. v. Morgentaler, 1993 and Rizzo & Rizzo Shoes Ltd., 1998)

The Hansard Debates surrounding the Container Trucking Act clearly recognizes other container hauling/drayage ongoings in the Lower Mainland and its goal to ensure that it is **NOT** captured within the Container Trucking Act.

If the Intent was to capture **all** of the container trucking in B.C. within the Act, the Legislators could and would have referenced the CSC Act and mentioned the ID plates.

We want to be clear that Simard currently has the **only** case tied to this matter before the Commissioner at this time, although we can confirm that several licensees are conducting their business in the same manner as Simard.

Again, this is not because companies are attempting to enrich themselves, they are simply following and respecting Canadian Law as it is written and defined.

If one's (a Commissioner) interpretation of a Law was a clear contrast from what the society's was, it is reasonable to expect that it would be incumbent upon the Commissioner to hold consultations with licensees and other stakeholders to which this contrast could potentially affect and report these MAJOR indifferences to the Ministry as Required.

Division 3 Section 14 (a)

Division 3, Section 14 of the Container Trucking Act reads as follows:

> 14. In addition to any other reports the commissioner **may or must** provide under this Act, the commissioner must, when directed to do so by the minister,
>
> (a) **review this Act and recommend to the minister any amendments to this Act that the commissioner considers will better enable the commissioner to perform or exercise the commissioner's powers, duties and functions under this Act**, and
> (b) report to the minister on any other matter, as specified by the minister.

This important role of the Commissioner is currently and has never been exercised.

Instead, the OBCCTC is operating in a manner that would suggest that companies sift through **YEARS** of conflicting Commissioners' decisions, orders, and bulletins, in order to determine (self-check) if they are compliant with the Act.

It is our opinion that this failed approach contributes to the instability of the drayage sector in terms of placing companies at MAJOR financial risks of collapse, depending on the duration of time to which the Commissioner is making his or her ruling. Not clearly advising Licensees of rules and regulations if asked, places driver pay at risk.

It is as well a clear failure of the regulatory regimes to ensure Statutory Law, and its obligation to make laws clear and available to its citizens.

Container Tracking Act Part 3 Division 1 Section 16

Canadian Law, the Container Trucking Act applies to Canadians. The Act states in Part 3, Division 1, section 16:

> (1) A **PERSON** (*not a licensee or trucker as defined in the Act*) must **not** carry out prescribed container trucking services in a prescribed area unless
>
> (a) The **person** holds a license issued to that **person** that gives the **person** permission to carry out container trucking serviced in the specified prescribed area, and
>
> (b) The person carries out the container trucking service in compliance with
>
> (c) This Act and the regulations,
>
> (d) The licence, and
>
> (e) If applicable, and order issues to the person under this Act.

If this section of the Act was intended to capture **all** container trucking services in the prescribed areas, there would be hundreds of Canadian and American trucking Companies in Violation of this Act every day and any given time.

OBCCTC-Decision No. 20-2016 V. OBCCTC-Decision No. 09-2023

The Commissioner has made his position clear in the OBCCTC-Decision No. 09-2023 Simard Westlink Inc. from August 25, 2023 by using previous Commissioner Mr. MacPhail's OBCCTC-Decision No. 20-2016 ForFar Enterprises Ltd.; **LINE 40** - *adopted misinterpretation of an analysis,* **LINE 44** - *adopted misinterpretation of an analysis*, **LINE 45** - *stating that CSC data plates are an indication that the impugned containers are* "*approved by Marine Carriers for the transportation **for** the Marine transportation of goods*"

LINE 40, OBCCTC-DECISION NO. 09-2023:

In ForFar Enterprises Ltd. (CTS Decision No. 20/2016) Commissioner MacPhail found that the inclusion of off-dock rates in the Regulation was consistent with his interpretation of the Act as applying to the movement of containers that did not travel directly to or from a marine terminal. There, also, the licensee argued that the movement of container between railcards and customer locations in the Lower Mainland was not captured by the Act. Commissioner MacPhail confirmed that containers moved from rail yards to customers in the Lower Mainland are within the scope of the Act because : "the legislation makes the payment of the legislated rates a term of the privilege of holding a TLS license. In return for being licensed to perform on-dock container trucking work, the licensed trucking company must comply with the legislation, including required pay rates for all work falling within the scope of the legislation." (para 35). I adopt this analysis.

It is extremely important for a decision maker to have a fulsome understanding of the context of situations to which they are making decisions.

Again, referring back to Commissioner MacInnes' comment in OBCCTC Decision No 09-2023 to Simard Westlink, the OBCCTC cites one of the main principles of statutory interpretation as:

**The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act,
and the intention of Parliament. (Canada (Minister of Citizenship de Immigration) c. Vavilov, 2019 SCC 65 at para 117:)**

Mr. MacPhail's findings in the Forfar Decision No. 20-2016 in that **his** interpretation of the Act as applying to the movement of containers that did not travel directly to or from a Marine Terminal was in part, correct.

For the purposes of this Letter of Information, we do not know that status of the containers in question in the Forfar 2016 Forfar decision, therefore we cannot comment on the container status and or what purpose it was being utilized for.

They may or may not have been Marine Containers as defined in the Container Trucking Regulations.

What Mr. MacPhail failed to illustrate or consider is that there are 2 distinctive modes of Transportation, Domestic and International.

CN and CPKC, offer their services to both sectors of the industry.

CN, CPKC, **and the Port Licensed companies** will offer to their customers "speed gates" or a service that will entail the picking up of a single, or multiple containers from the Port to CN or CPKC, or from CN or CPKC to the Ports.

This service allows for customers to by-pass the slow process of rail and Port terminal interchanges and an opportunity to have there product expedited through the supply chain to its final destination. **(evidence can be provided upon request to the PTA)**

Port Licensed companies are irrefutably aware of this and it is our opinion that Port Licensed companies **MUST** pay the regulated rates.

LINE 44, OBCCTC-DECISION NO. 09-2023:

In ForFar Enterprises Ltd. (CTS Decision No. 20/2016) the then-Commissioner stated that "containers which are identified by 4-letter identification codes consistent with containers, 'furnished or approved by an ocean carrier for the marine transportation of goods' are to be presumed to be 'containers' as defined in the Regulation/' He went on to sat that "where containers are so identified, the onus lies with the licensee to rebut this presumption." I have adopted that analysis with respect to the containers moved by Simard on March 15, 2023.

The correct interpretation of the then Commissioner Duncan MacPhail:

"Containers which are identified by 4-letter identification codes **consistent with containers**" with respect to this statement, Mr. MacPhail is using the word containers in its **broadest form** implying that yes, they a marked with 4-letter identification codes "consistent with containers".

If Mr. MacPhail had any evidence or direction from the Container Trucking Act, its Regulations, or the Hansard Debates that the 4 letters on a container implied/ certified that if a "metal box furnished or approved by an Ocean Carrier ***for*** the Marine transportation of goods" contained these markings, it would meet the definition of a container as written in the Act, its highly probable that he would have backed up his assertions with evidence that would support that theory.

Mr. MacPhail did not have supporting evidence that the CSC Act in any way was to be used in conjunction or referred to with respect to the Container Trucking Act, thus not submitted or mentioned.

LINE 45, OBCCTC-DECISION NO. 09-2023:

I previously found that the Impugned Containers were covered under the Act; this finding has not been rebutted. I further find the Additional Impugned Containers also fall within the scope of the Act. The Additional Impugned Containers are identified with the 4 -letter identification codes consistent with marine containers. Furthermore, as set out at page 4 of

> *Investigation Report #2, some of those containers have been recorded on shipping tracking websites as having been recently transported on the ocean and similar containers have been photographed on ocean carriers. As also set out at page 5 of the Investigation Report #2, containers similar to the Additional Impugned Containers have been affixed with Convention of Safe Container plate ("CSC Plate") which authorizes the use of the containers for the marine transportation of goods. Based on the above, and Simard's failure to provide evidence to the contrary, I am satisfied that the Additional Impugned Containers are each "a metal box furnished or approved by an ocean carrier for the marine transportation of goods" as per the Regulation.*

Line 45 specifically draws attention to key components, including Identification codes and CSC Plates, which will be discussed in full in the next section of the this report.

Container: What is a Container & CSC Plate

To fully explore and understand containers and CSC Plates, we will be discussing and pointing to the Simard findings within the OBCCTC Order to Comply, dated May 26, 2023 and the Simard Decision 09-2023 dated August 25, 2023, both posted on the OBCCTC Website.

Container: Definitions

To give the word "container" context used within this letter, we **are** referring to it in the utmost **simplistic** form; a metal box used for transportation, storage, rental, sale of any one type of container that cargo can be **laden** without having its load be removed prior to its change of mode of transport, ship to rail, rail to ship, ship to truck, truck to ship, rail to truck, truck to rail.

The Commissioner's 'Order to Comply' hinges off of three very important words and an attestation:

- **Container**
- **Furnished**
- **Approved**
- The **CSC** plates were affixed to each container.

Container, as defined in the Regulations: "**means a metal box furnished or approved by an ocean carrier *for* the marine transportation of goods".**

Furnished, *not* defined in the Container Trucking Act or its Regulations: **We are confident that we can agree that its meaning is, supplied or given, for the purposes of this letter of information.**

Approved, *not* defined in the Container Trucking Act or its Regulations: **We are confident that we can agree that its meaning is, accept, endorse or to certify, for the purposes of this letter of information.**

CSC Act & Plates: Definitions

CSC Act: Although the Container Trucking Act refers to **several** other Canadian Acts, including but not limited to: The Employment Standards Act, Motor Vehicle Act, Canadian Marine Act, Interpretation Act and the Offence Act, neither CSC plates, nor the CSC Act are referred to in any instance whatsoever within the Container Trucking Act, its regulations, or Hansard Debates surrounding the Container Trucking Act, despite the CSC Act having been if force since 1972 and with amendments in the mid-'80s.

The CSC Act is and was clearly available to Legislators at the time of the Hansard Debate leading up to the creation of the Container Trucking Act and contains in-depth literature pertaining to the CSC plates and their purpose. (https://laws-lois.justice.gc.ca/eng/acts/S-1/page-1.html)

The impugned containers from the Order to Comply, with reference to the first three letters in their prefix:

CPP (a CPKC owned 53-foot container specifically built for domestic use on road or rail)
EMC (a 40-foot container that at **ONE** point in time is believed to be owned or leased by Evergreen Shipping Line)
TXG (a 40-foot container that at **ONE** point in time is believed to be owned by the Container **LEASING** company)

To be clear about the ongoings of the organizations noted above, please see below for your reference.

CPP // CPKC is a North American Railway Company that transports containers by rail and truck throughout its networks in North America. The container referenced in the Order could be of their own private inventory, SOC or lease container on lease to any one individual or Shipping Line. English (cpkcr.com)

EMC // Evergreen is a Container Shipping Company (Shipping Line) that provides Worldwide Ocean container shipping. The container referenced in the Order (prior to investigation) could be of their own private inventory, SOC or lease container on lease to any one individual or Shipping Line. Shipping Line containers can and have changed ownership despite having a specific container's 3 letters affixed to them for a variety of reasons. **(The PTA can elaborate if requested with documentation)**. EVERGREEN LINE (evergreen-line.com)

TXG // Textainer, also know as TEX, is an Equipment **LEASING** Company that leases or sells containers long term, short term, to the public, Shipping Lines, and Military all of which could have the prefix TXG or a variety of others. The container referenced in the Order may or may not be of their own private inventory, SOC or lease containers on lease to any one individual or Shipping Line. **(The PTA can elaborate if requested with documentation)**. Textainer | Container Leasing

Commissioner Findings Dated May 26,2023

Using the container's prefix as a reference to determine who is currently leasing it, renting it, or owing it, is a flat-out impossibility unless confirmation directly from the renter, lessor, or owner of the container has been communicated to the carrier to which they could communicate the trucker.

Only a **direct** contractual agreement between the carrier (with assigned SCAC code) and the Shipping line could be used to have the confidence (although not 100%, see CSC criteria section) that the unit in question is in fact at that point in time "furnished and approved by an Ocean Carrier **FOR** the Marine Transportation of goods."

This would certainly be the case for a trucker pulling any one container. The trucker is not privy to the current ownership or organization to which it is in care and control of as it is not displayed on the container, nor are there any valid registration papers affixed to any one container. **(The PTA can elaborate if requested with documentation)**.

There are 65 million shipping containers in the World; it's unreasonable to assume that any one carrier or trucker could possibly know whose approved container they are hauling unless they had a direct connection with the Ocean Shipping Carrier.

The only case to which a container can be assumed to be supplied and approved for the shipping of Marine Goods is when said container is associated with a BOL or BOOKING number, which would be printed out on the release trucker interchange when picked up as an Empty to load as Export or in the case of an Import, a BOL number.

These interchanges are retained by Ports, Off-dock Depots, Shipping Lines, and carriers. Should a container's status be question by the Trucking Commissioner with respect to the Licenses, Interchanges with dates, times and booking details can be provided from any of the above.

We would and have always supported that the onus should be placed on the licensee to provide the Commissioner with the container Interchange, should a containers status come into question. The Commissioner has the authority to amend the license to require as such.

Container Bookings and Tracking

Containers, when used for the **purpose** of transporting **Marine Goods,** are throughout its **entire** journey, from pick up to delivery, linked to a Booking number/BOL. **(The PTA can elaborate with additional documentation if requested)**

Container Track-Trace is a site that is used by the industry (Container tracking - track-trace) and in some cases, **not all**, will give you direction as to which last organization (Shipping Line) was in care and control of the unit by lease, rent, or ownership.

Any one party can track the movement of a container utilized for the transportation of Marine goods throughout its entire journey on the Track-Trace website.

When an active container is keyed in to Track-Trace, it will direct you to the Shipping Line's Website where updates on the Vessel from origin to the transfer of Rail on the Mainland, to its final delivery location in other Provinces.

When a DRP container is keyed in, the last known location for the unit will be displayed. If a container is shipped from overseas, transferred to rail at the Ports, then delivered to the end location, that is what will be displayed.

After the container's contents have been removed and the unit is then transferred, leased, or hired to another party, the unit is then utilized for the transportation of Domestic goods.

Throughout the journey, from pick up to delivery of the Domestic goods, the container's status will only show the last know location when it was being utilized for the transportation of Marine goods.

The impugned containers referenced in the Simard order should **not** be considered to be "Containers" as defined in the Act or Regulations for the following, but ***not limited*** to, reasons:

- The containers were being utilized in a domestic capacity, as explained to the Commissioner.
- It is clear that Simard was in compliance with the Container Trucking Act.
- The Commissioner's predecessors have already ruled on DRP 40- and 53-foot containers within the context of expansive and detailed Audits that were

completed since 2014 up until the latest Commissioner's departure in 2023. **(CN Audit attached and others can be submitted upon request to the PTA)**

Containers that move in and out of CN and CP supply Canada and the World with goods, both Import, Export and of a domestic capacity.

The Commissioner indicates that the containers "clearly" are capable of being Transported, as their CSC Plate is approving them for international transport.

Even if this was the case and the Container Trucking Act, its Regulations, or the Hansard Debates remotely supported this theory, all shipping containers with CSC plates affixed to them have conditions and CANNOT be assumed to be in compliance with the only indication being that a CSC plate is present.

To further demonstrate that a CSC plate being present cannot be a deciding factor in compliance, we must examine the CSC Act.

CSC ACT: Chapter I — Regulations Common to All Systems of Approval

REGULATION 1: SAFETY APPROVAL PLATE

1. (a) A Safety Approval Plate conforming to the specifications set out in the Appendix of this Annex shall be permanently affixed to every approved container at a readily visible place, adjacent to any other approval plate issued for official purposes, where it would not be easily damaged.

2. (a) The Plate shall contain the following information in at least the English or French language:

- "CSC SAFETY APPROVAL"
- Country of approval and approval reference
- Date (month and year) of manufacture

- Manufacturer's identification number of the container or, in the case of existing containers for which that number is unknown, the number allotted by the Administration
- Maximum operating gross weight (kilogrammes and lbs.)
- Allowable stacking weight for 1.8 g (kilogrammes and lbs.)
- Transverse racking test load value (kilogrammes and lbs.).

3. A blank space should be reserved on the Plate for insertion of end-wall and/or side-wall strength values (factors) in accordance with paragraph 3 of this Regulation and Annex II, tests 6 and 7**. A blank space should also be reserved on the Plate for the first and subsequent maintenance examination dates (month and year) when used.**

4. The presence of the Safety Approval Plate does not remove the necessity of displaying such labels or other information as may be required by other regulations which may be in force.

REGULATION 2: MAINTENANCE AND EXAMINATION

1. The owner of the container shall be responsible for maintaining it in safe condition.

2. (a) The owner of an approved container shall examine the container or have it examined in accordance with the procedure either prescribed or approved by the Contracting Party concerned, at intervals appropriate to operating conditions.

(b) The date (month and year) before which a new container shall undergo its first examination shall be marked on the Safety Approval Plate.

(c) The date (month and year) before which the container shall be re-examined shall be clearly marked on the container on or as close as practicable to the Safety Approval Plate and in a manner acceptable to that Contracting Party which prescribed or approved the particular examination procedure involved.

(d) The interval from the date of manufacture to the date of the first examination shall not exceed five years. Subsequent examination of new containers and re-examination of existing containers shall be at intervals of not more than 30 months. All examinations shall determine whether the container has any defects which could place any person in danger. As a transitional provision, any requirements for marking on containers the date of the first examination of new containers or the re-examination of new containers covered in Regulation 10 and of existing containers shall be waived until January 1, 1987. However, an Administration may make more stringent requirements for the containers of its own (national) owners.

3. (a) As an alternative to paragraph 2, the Contracting Party concerned may approve a continuous examination programme if satisfied, on evidence submitted by the owner, that such a programme provides a standard of safety not inferior to the one set out in paragraph 2 above.

(b) To indicate that the container is operated under an approved continuous examination programme, a mark showing the letters "ACEP" and the identification of the Contracting Party which has granted approval of the programme shall be displayed on the container on or as close as practicable to the Safety Approval Plate.

(c) All examinations performed under such a programme shall determine whether a container has any defects which could place any person in danger. They shall be performed in connection with a major repair, refurbishment, or on-hire/off-hire interchange and in no case less than once every 30 months.

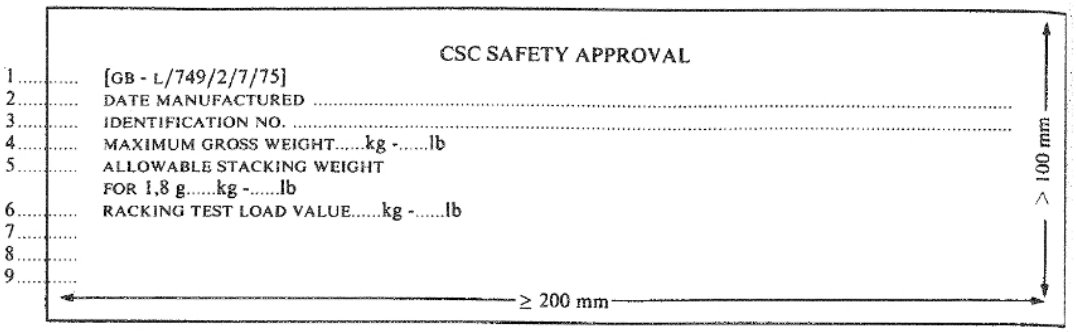
(d) As a transitional provision any requirements for a mark to indicate that the container is operated under an approved continuous examination programme shall be waived until January 1, 1987. However, an Administration may make more stringent requirements for the containers of its own (national) owners.

CSC ACT APPENDIX: READING A CSC SAFETY APPROVAL PLATE

See Exhibit 1, Report page 27.

APPENDIX

The Safety Approval Plate, conforming to the model reproduced below, shall take the form of a permanent, non-corrosive, fire-proof rectangular plate measuring not less than 200 mm by 100 mm. The words "CSC Safety Approval" of a minimum letter height of 8 mm and all other words and numbers of a minimum height of 5 mm shall be stamped into, embossed on or indicated on the surface of the Plate in any other permanent and legible way.



1 Country of Approval and Approval Reference as given in the example on line 1. (The country of Approval should be indicated by means of the distinguishing sign used to indicate country of registration of motor vehicles in international road traffic).

2 Date (month and year) of manufacture.

3 Manufacturer's identification number of the container or, in the case of existing containers for which that number is unknown, the number allotted by the Administration.

4 Maximum Operating Gross Weight (kilogrammes and lbs.).

5 Allowable Stacking Weight for 1.8 g (kilogrammes and lbs.).

6 Transverse Racking Test Load Value (kilogrammes and lbs.).

7 End Wall Strength to be indicated on plate only if end walls are designed to withstand a load of less or greater than 0.4 times the maximum permissible payload, i.e. 0.4 P.

8 Side Wall Strength to be indicated on plate only if the side walls are designed to withstand a load of less or greater than 0.6 times the maximum permissible payload, i.e. 0.6 P.

9 First maintenance examination date (month and year) for new containers and subsequent maintenance examination dates (month and year) if Plate used for this purpose.

Exhibit 1

Applying the CSE ACT: A Sampling of Containers

EXPIRED CONTAINER

Looking at Exhibit 2, this photo of a CSC Safety Plate has been taken from a retired Container (17 years old), as photographed in Exhibit 3, bearing a CSC plate under the ACEP program.

This container, although bearing a CSC plate, cannot be considered to be an approved container as the Commissioner suggests. Yes, it has been on a ship at one point in its useful life. In this case, it's apparent that the **ACEP** approval is not valid as the owner of the unit is not a Shipping Line and is not required under the CSC Act to ensure that the periodic maintenance and records are valid and available for inspection. The container is used for other purposes than the Marine.

The only way a carrier or license holder could have faith in the validity of the ACEP stamp is if the Shipping Line furnished the unit directly to the licensee by way of a booking.

Port Transportation Association

Exhibit 2

P.O. Box 1791 Parksville, BC V9P 2H6
778-228-0544
administration@ptavancouver.com
https://ptavancouver.com/

Exhibit 3

P.O. Box 1791 Parksville, BC V9P 2H6
778-228-0544
administration@ptavancouver.com
https://ptavancouver.com/

STORAGE CONTAINERS

The Plate in Exhibit 4 is from a storage Container (photographed in Exhibit 5) bearing a CSC plate under a required examination stamp. The Examination date has clearly expired. The container is used for other purposes than the Marine Transportation of Goods.

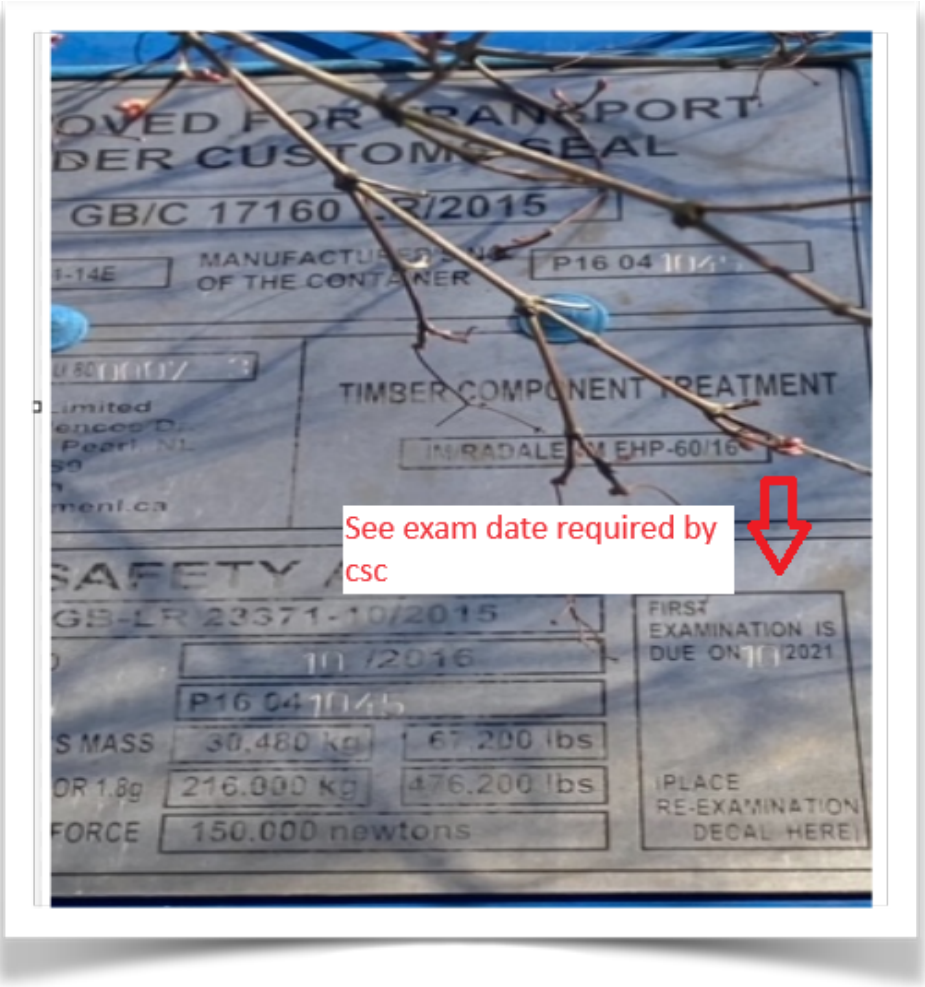


Exhibit 4


SMEU 800007 3
22G1
MAX. GR. 30.480 KGS
67.200 LBS
TARE 2.185 KGS
4.820 LBS
NET 28.295 KGS
62.380 LBS
STORAGE
CONTAINER
EASY TO
OPEN DOOR
CU. CAP. 33.2 CU.M.
1,172 CU.FT

Exhibit 5

ACTIVE CONTAINER

The container photographed in Exhibit 6 is active and out on a Booking for the purposes of the transportation of Marine Goods. Maersk Booking 235482544 (Exhibits 7 & 8).

This has an ACEP stamp (Exhibit 5) and confidence can be achieved that it's an "approved container" simply because it was **actually** release to a Licensee carrier for the Marine Transportation of Goods.

Exhibit 5

Port Transportation Association

Exhibit 6

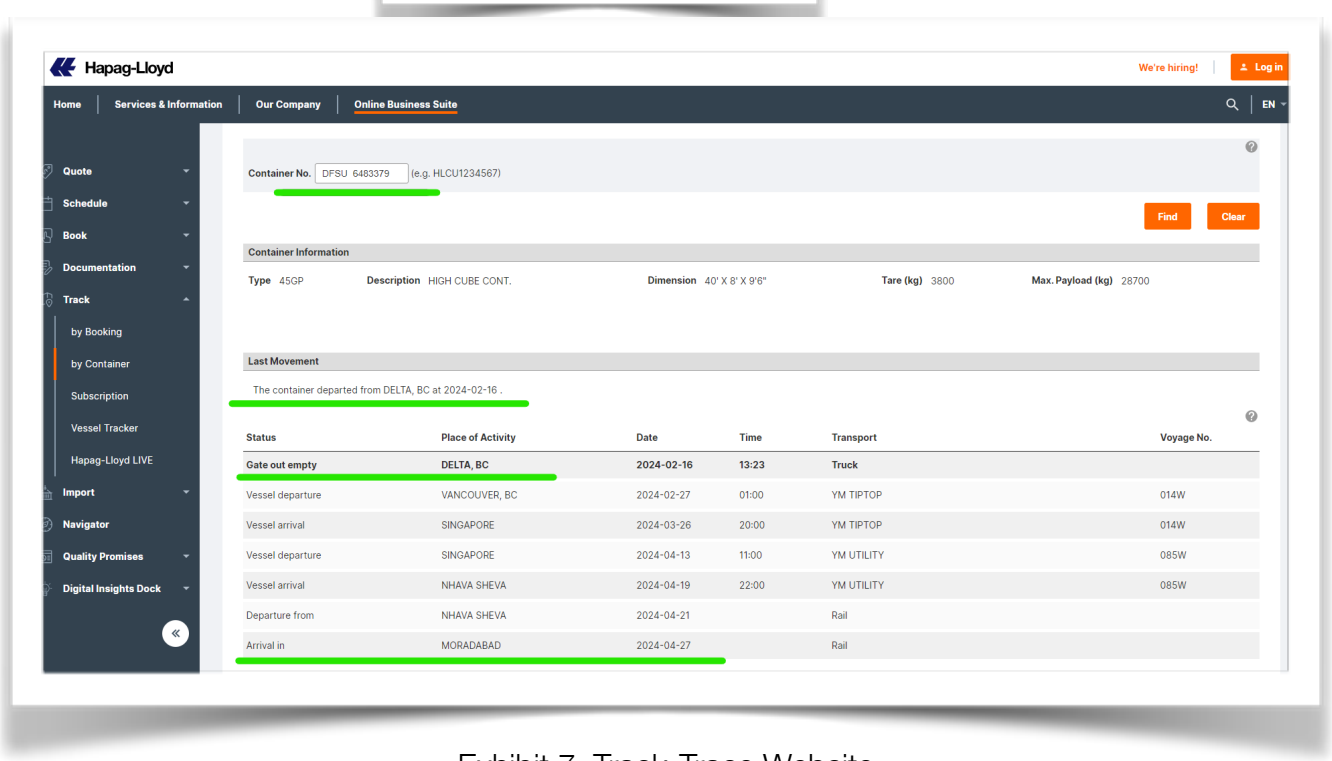
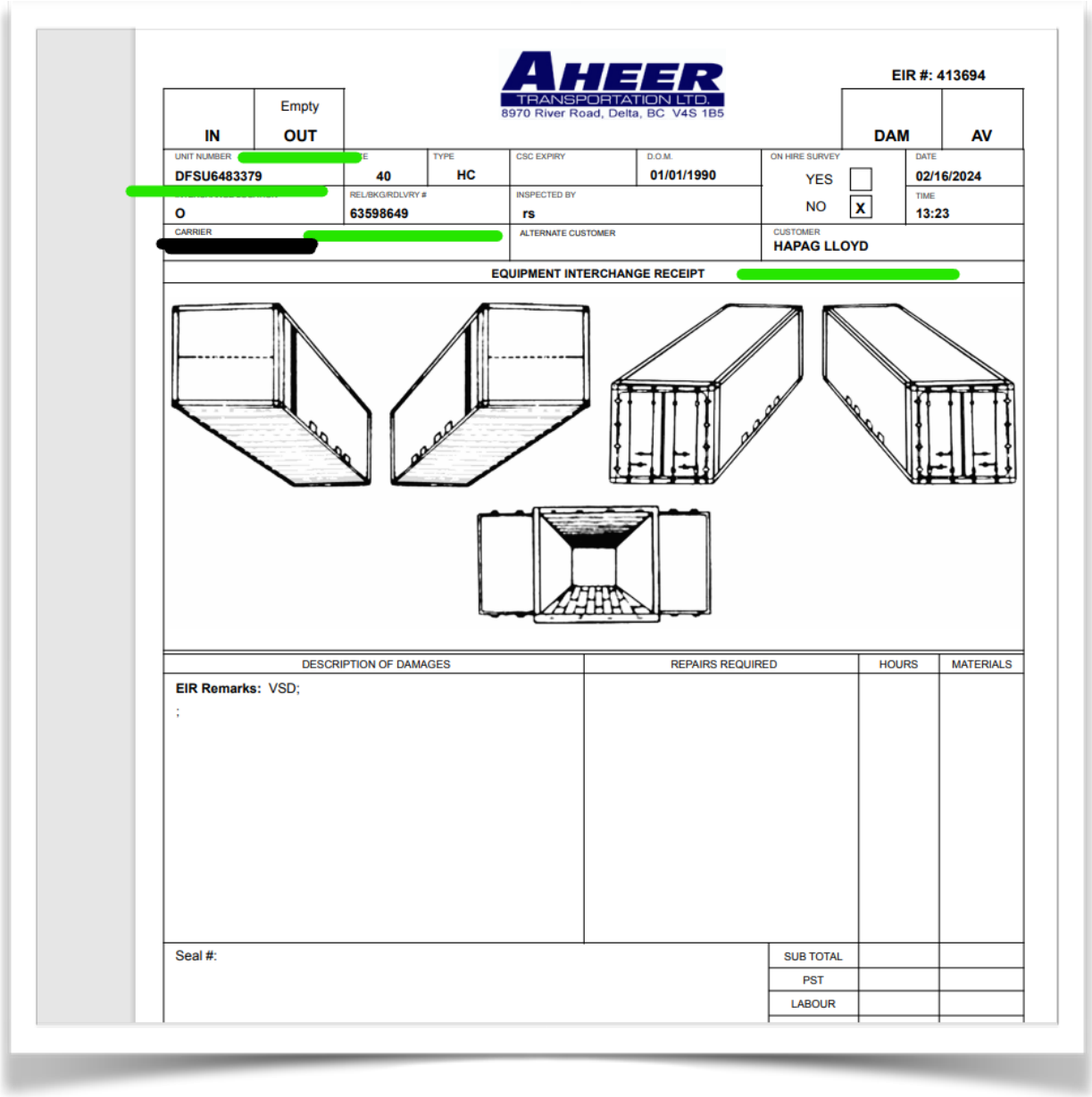


Exhibit 7: Track-Trace Website

P.O. Box 1791 Parksville, BC V9P 2H6
778-228-0544
administration@ptavancouver.com
https://ptavancouver.com/

For transparency and industry purposes, the PTA intends to distribute all content and post all meaningful dialogue on our website, to be viewed by both industry and the public.



AHEER TRANSPORTATION LTD.
8970 River Road, Delta, BC V4S 1B5

EIR #: 413694

IN	Empty OUT					DAM	AV
UNIT NUMBER: DFSU6483379		E: 40	TYPE: HC	CSC EXPIRY:	D.O.M.: 01/01/1990	ON HIRE SURVEY: YES [ ] NO [X]	DATE: 02/16/2024
O		REL/BKG/RDLVRY #: 63598649		INSPECTED BY: rs			TIME: 13:23
CARRIER: [redacted]				ALTERNATE CUSTOMER		CUSTOMER: HAPAG LLOYD	

EQUIPMENT INTERCHANGE RECEIPT

DESCRIPTION OF DAMAGES	REPAIRS REQUIRED	HOURS	MATERIALS
EIR Remarks: VSD; ;			
Seal #:	SUB TOTAL		
	PST		
	LABOUR		

Exhibit 8: Depot Outgate Interchange

Consequences for British Columbia for the Misinterpretation

The uses for a 'Container' are extensive, however in relation to the Container Trucking Act, the definition 'Container' and what the Act is intending to encompass has always been clear to the Industry.

For the current Commissioner to take the position that domestic containers are to fall under the Act and therefore his Jurisdiction without consulting the industry is extremely disappointing, as it was clear from the Hansard Debate that the OBCCTC was to be a part-time office, that was responsible to oversee driver pay rates and ensure driver pay compliance.

The trajectory for that office now will see it, and all enforcement agencies, expand beyond comprehension.

We caution the OBCCTC from attempting to replicate the Employment Standards Board. The Costs that are passed on to Licensees ultimately are passed on to consumers.

With the hard-hitting inflation we have all experienced, consumers would not appreciate paying for a duplication of government services.

While we appreciate the current Commissioner's background experience in Labor Law, the Commissioner's vision of the OBCCTC Office is massive expansion with duplication of several regulatory bodies already in force.

It is also feared that the current Commissioner's vision of the OBCCTC Office is massive expansion with duplication of several regulatory bodies already in force at an expense to the Licence carriers and the Industry as a whole. (SEE: **2024 CTS LICENCE REFROM PROPOSED CHANGES**).

As noted throughout the report, the CSC Act has never at any time been mentioned in the Hansard Debates, the Container Trucking Act, its Regulations, previous licenses, decisions, industry bulletins or the Joint Action Plan.

We strongly feel that if a Commissioner chooses to introduce existing Acts (CSC Act) as a method relied upon to interpret what constitutes a container; the Commissioner should then give notice to Industry stakeholders, Government, and licensees of the newly found resources.

Compelling companies through audit of driver's daily hours and forcing them to back pay drivers for offences that they were not aware that they committed in relation to recent and unpublished definition changes is a catalyst for industry destabilization.

The PTA feels that it is incumbent upon a Commissioner to fairly determine the facts and merits of a situation (in this case, DRP and 53-foot units) and apply a solution in a fair transparent manner.

The PTA is under the impression that the OBCCTC has become a one-way bargaining agent for drivers, continually striving for accolades from the Labour sector, no matter the cost to those companies operating in the sector. This is demonstrated by drastic changes in definition to better please a vocal subsection of the labour sector. We point to the fact that not one unionized company pays more than the minimum rates set out by the Commissioner as another telling example of this behaviour.

What has unfolded since the Container Trucking Act has been put into force, is varying opinions by several Commissioners, and it is clear by where we are today that the spirit and the intent of the Act has been lost.

Decisions with some of the harshest consequences to small businesses in terms of fines and license cancelations in Canada and North America, have been handed down by a single person (acting Commissioner) by their hand-picked interpretation of their predecessor's interpretations.

Extracting interpretations that fit a current narrative and excluding interpretations that do not, then applying harsh penalties, is not conducive of a Commissioner's Office.

This clearly needs to stop. Canadians have the right to have a fulsome understating of the Laws of this Country and an opportunity to follow them.

P.O. Box 1791 Parksville, BC V9P 2H6
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https://ptavancouver.com/

February 22, 2024

Simard Westlink Inc.
16062 Portside Road
Richmond, BC V6W 1M1

Commissioner's Decision
Simard Westlink Inc. (CTC Decision No. 04/2024)
(Application for Reconsideration of CTC Decision No.09/2023)

I. Introduction

1. On October 12, 2023, the Office of the BC Container Trucking Commissioner ("OBCCTC") received an application from Simard Westlink Inc. ("Simard") pursuant to section 38 of the Container Trucking Act ("*Act*") seeking reconsideration of the September 15, 2023, Decision Notice (CTC Decision No. 09/2023). Simard asks that the Decision Notice "be cancelled, the Commissioner's orders be vacated, and that the Commissioner confirm there has been no breach of the *Act, Regulation*, or Simard's licence."

II. Original Decision, Original Decision Supplemental and Decision Notice

2. Simard Westlink Inc. ("Simard") is a licensee within the meaning of the *Act*.

3. On March 15, 2023, two trucks belonging to Simard were observed moving two containers (EMCU863256 and TXGU585325) near Kennedy Road in Port Coquitlam ("Impugned Containers") with untagged trucks, apparently in breach of its container trucking services ("CTS") licence. The OBCCTC launched an investigation and sought payroll documents related to the Impugned Containers and invited Simard's response.

4. Simard failed to provide the requested payroll documents by the deadline and submitted that the movement of the Impugned Containers was outside the scope of the *Act* because the moves were between rail facilities and customer locations in the Lower Mainland and did not require access to a marine terminal.

5. On May 16, 2023, I shared a preliminary investigation report with Simard that included reasons for my preliminary finding that the Impugned Containers were captured by the *Act*. The Impugned Containers were owned by companies that either ship containers by ocean or supply other companies who do so, were recently recorded as having traveled overseas, and were affixed with CSC safety plates. On this basis I advised that I considered they met the definition of "container." I also set out why I considered the rail yards involved were "facilities" under the *Act*. Simard was invited to provide a further submission but did not do so at that time (it later became clear that it

had not received my May 16, 2023 correspondence).

6. On May 26, 2023, I determined that the movement of the Impugned Containers was in contravention of section 16(1)(b) of the *Act* and its CTS licence and ordered Simard to cease performing untagged container trucking services in contravention of its CTS licence and the *Act* (the "Order"). Given its failure to provide the requested payroll records, Simard was also ordered to produce the payroll records related to the Impugned Container movements on March 15, 2023.

7. Simard received the Order, and then requested and received the May 16, 2023 preliminary investigation report regarding the Impugned Containers. Simard responded on June 5, 2023. Simard maintained its position and advised that it would be applying for judicial review of the Order.

8. On June 14, 2023, I provided Simard with a supplemental investigation report to which Simard responded on June 16, 2023. The investigation determined that additional containers were moved between the following facilities within the Lower Mainland ("Additional Impugned Containers") on March 15, 2023. The Impugned Containers and the Additional Impugned Containers (together, "Containers") moved on March 15, 2023 by the two drivers were as follows:

Driver	**From**	**To**	**Container Number**
G. Brar	CP Rail Yard	Rolls Right Terminal	EMCU863256
G. Brar	Rolls Right Terminal	CP Rail Yard	EMCU863256
G. Brar	CP Rail Yard	Purolator Richmond	CPPU236082
G. Brar	Purolator Richmond	Western Canada	"Bob tail" (meaning no container or trailer)
G. Brar	Western Canada	TJX Canada	CPPU237220
G. Brar	TJX	CP Rail Yard	CPPU234089
S. Kim	CP Rail Yard	Toys R Us	UACU527276
S. Kim	Toys R Us	CP Rail Yard	Empty
S. Kim	CP Rail Yard	Van Kam	DRYU912237
S. Kim	Van Kam	CP Rail Yard	TLLU405617
S. Kim	CP Rail Yard	Simard Westlink Yard	TXGU585325
S. Kim	Simard Westlink Yard	CP Rail Yard	EITU138429
S. Kim	CP Rail Yard	Rolls Right Terminal	TCLU888393
S. Kim	Rolls Right Terminal	CP Rail Yard	TCLU888393

9. The investigation also compared the wages paid to the two drivers moving the Containers on March 15, 2023 against the regulated rates and determined that independent operator ("IO") Mr. Brar and company driver Mr. Kim were owed $732.68 and $6.29 respectively for work performed

on that day. It also found that Mr. Brar was owed $468.28 in unauthorized deductions and was not an IO registered on the independent operator list ("IO List") as required.

10. Simard disagreed that the movements of the Containers were captured by the *Act* since they did not transit through a marine terminal. Simard also argued some of the Containers were not suitable for the marine transportation of goods and therefore did not meet the definition of "container" in the *Regulation.*

11. On August 25, 2023, I issued a decision (the "Original Decision"), in which I found that the Containers met the definition of "container" and were moved between "facilities" within the Lower Mainland and therefore were covered by the *Act* for substantially the same reasons I had found the Impugned Containers were covered by the *Act*. I determined that Simard had failed to comply with sections 16(1)(b)(i) and (ii) and 23(2) of the *Act* and sections 6.15, 6.16, 6.20 and 6.21 of its licence by using untagged trucks to move containers between facilities in the Lower Mainland, paying two drivers less than the regulated rates, and using the services of an IO not on the IO List. I ordered Simard to pay Mr. Kim $6.29 and Mr. Brar $1,200.96 and to review its payroll records between September 1, 2019, and August 25, 2023 and make the appropriate adjustments to bring itself into compliance with the regulated rates no later than February 28, 2024. An administrative penalty of $12,000.00 was proposed and Simard was provided the statutory seven (7) days to respond. Simard had asked that I suspend the Order requiring it to cease and desist performing container trucking services in contravention of its licence and the *Act* but I did not agree to do so.

12. After reviewing Simard's submission in response to the proposed penalty, I confirmed the order that Simard review its payroll records for the specified period and make the appropriate adjustments and confirmed the penalty of $12,000.00 by Decision Notice issued September 15, 2023. I suspended my order to pay Mr. Kim and Mr. Brar pending receipt of additional payroll information from Simard.

13. On October 12, 2023, Simard filed its application for reconsideration. On October 13, 2023, Simard requested an extension to the deadline for reviewing its payroll records between September 1, 2019 and August 25, 2023. By letter dated October 19, 2023, I granted a stay until six months following a reconsideration.

14. On November 1, 2023, Simard requested a stay of the application of my orders as they related to 53-foot containers. By letter dated November 6, 2023, I explained why I could not agree to its request and advised Simard that I had not decided on all 53-foot containers but only on those containers identified in the March 15 investigation.

15. On December 18, 2023, I issued a supplement to the Original Decision ("Original Decision – Supplemental") following a review of Simard's submission and payroll records related to Mr. Kim and Mr. Brar. Based on the additional information provided, I found that Mr. Kim was paid the regulated rate on March 15, 2023. I found that Mr. Brar was not entitled to the fuel surcharge and that the payroll deduction made was for the fuel charged by Mr. Brar to Simard's corporate fleet account for diesel fuel and therefore permissible under the *Act*. I also found Mr. Brar was not paid the regulated position movement rate ("PMR") or the minimum trip rates for each move on March 15, 2023 and was owed $377.44.

III. Judicial Review

16. On July 25, 2023, Simard filed a petition for judicial review of my Order.

17. On September 5, 2023, Simard filed an application for a stay of my Order and the application of the Original Decision.

18. On September 29, 2023, the Court dismissed Simard's stay application (*Simard Westlink Inc. v. Office of the BC Container Trucking Commissioner* 2023 BCSC 2007) with reasons ("Reasons").

IV. Request for Reconsideration

19. As mentioned above, Simard's request for reconsideration was made October 12, 2023.

20. As the Original Decision – Supplemental was issued after Simard's request for reconsideration, I provided Simard with an opportunity to respond to it. I also invited Simard to make submissions on the Court's Reasons. Simard provided its response on January 5, 2024.

21. I also invited Simard to provide additional information about the manufacturing date on the Containers with the prefix CPPU. Simard provided its response on January 10, 2024.

22. For the purposes of this reconsideration, I will refer to the October 12, 2023, reconsideration submissions, and the January 5 and 10, 2024 submissions collectively as Simard's "Reconsideration Submissions." In the Reconsideration Submissions Simard states that it "continues to rely on the previous submissions to the Commissioner and relies on its materials filed in the BC Supreme Court" and I have also considered those materials.

23. Simard's Reconsideration Submissions restate many of its initial arguments in support of its position that the Containers are not covered by the *Act*, *Regulation,* and the CTS licence but also raise new arguments and provide additional evidence that was not advanced prior to the Original Decision or Decision Notice.

24. In its Reconsideration Submissions, Simard reiterates its position that the regulatory regime only applies when it is carrying out the "prescribed container trucking services" set out in s. 16 of the *Act* and defined in section 2(1) of the *Regulation.* It argues that because the Containers did not travel to or from a marine terminal on March 15, 2023 they are not "prescribed container trucking services."

25. Simard submits for the first time that "facility" as defined in the *Regulation* only captures locations where containers are "stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping," that "for shipping" qualifies each of the words preceding it, and that "shipping" (which is not defined in the legislation) refers only to the marine transportation of goods.

26. According to Simard, then, the Commissioner erred by determining that the start and end point of each movement of each Container was a "facility" since each Container was on March 15, 2023,

engaged in the "domestic" and not "marine" shipping of goods. Simard argues that its interpretation of "facility" supports its argument that the legislative scheme only applies to containers that transit through a Lower Mainland marine terminal.

27. In furtherance of its position that the legislative scheme does not capture the movement of the Containers, Simard argues that the reference to "specified" container trucking services restricts the regime to containers transiting through a marine terminal. Simard does not specifically cite s. 22(1) of the *Act*, but I understand it as referring to that section. As I understand Simard's argument, s. 22(1) of the *Act* allows minimum rates to be established only for drivers performing "specified container trucking services" in "specified circumstances" and "specified" is synonymous with and limited to the "prescribed trucking services" defined in s. 2 of the *Regulation*.

28. Simard also argues that the legislative scheme cannot have been meant to capture the Containers because a simple corporate restructuring of the licensee would allow it to avoid the application of the *Act* for "off-dock" moves. A company could restructure itself to have one licensed company perform work that requires access to a marine terminal and another unlicensed company perform work that does not require access to a marine terminal. Simard argues that the legislature, in light of the purpose of the *Act*, could not have set up a regime that would "both punish licensees and reward trivial corporate restructuring."

29. Simard also reiterates that the Containers do not meet the regulatory definition of "container" because they were not used for the marine transportation of goods on March 15, 2023. It has now submitted manifests of the contents of some of the Containers which indicate they were used by Canadian companies to ship goods by rail from eastern Canada to the Lower Mainland. It argues that because the some of the Containers contained "domestic goods" and because they were moved within Canada, they are not "containers" under the *Act*.

30. Simard argues there is "no evidence or irrelevant evidence" supporting the Commissioner's findings that some or all of the Containers were furnished or approved by an ocean carrier for the marine transport of goods. Simard disputes that a CSC plate indicates a container is "furnished or approved by an ocean carrier for the marine transportation of goods." Citing the *Safe Containers Convention Act,* Simard says there is a requirement that containers beyond those defined in the *Regulation* be affixed with a CSC safety plate and that the plate is only indicative that a container is safe to transport on ships – not that the container is furnished or approved by an ocean carrier for the marine transportation of goods. Simard argues that while "the presence of a CSC plate may be a necessary condition for" approval by an ocean carrier for the marine transportation of goods "it is not a sufficient condition." Simard also maintains that the fact that a container may have recently travelled on the ocean does not indicate that it is furnished or approved by an ocean carrier for the marine transport of goods.

31. Simard's alternative argument is that even if some of the Containers are "containers" under the legislation, "53-foot containers cannot be among them." Simard identifies containers with the prefixes CPPU, CDAU and EMHU as 53-foot containers owned or used by CP Rail. Simard submits emails from representatives of local marine terminals, retail companies and CP Rail that it says support its proposition that 53-foot containers are generally manufactured overseas and travel over the ocean to North America only once when they are delivered to their retail and rail owners.

Mr. Brady Erno, Senior Commercial Manager at DP World, acknowledges that 53-foot containers supply the domestic markets but have been "on occasion, laden with cargo for import," and Mr. Colin Parker, Director of Operations at GCT Deltaport, advises that 53-foot containers have been used in the past as marine containers and that a "very limited number of 53-foot containers are shipped in Deltaport as the business needs and handling constraints restrict the terminal." Mr. Rui Teixeira, Senior Director Intermodal Maintenance, CP Rail, advises that its 53-foot containers are sourced from overseas and "the CSC plate was only required for the move on the ship, in case we wanted to put cargo in them." Mr. Matthew Beaton from Canadian Tire states that it only uses the CSC plate on its 53-foot containers to move the containers "laden out of China" and they "do not keep the certification valid" after it arrives in North America.

32. Simard also submits a photo of a CSC plate along with a manufacturer's plate labelled "Domestic Container" for a CP Rail container with an identification number of QDCM22G12064 that it says indicates the container is for non-marine use. Furthermore, CP Rail states that its CSC plates are required to be renewed within 30 months of the container's manufacturing date and its practice is to not renew those CSC plates. The manufacturing dates for the three Containers with the prefix CPPU are as follows:

    a. CPPU236082 – March 2018
    b. CPPU237220 – October 2021
    c. CPPU234089 – May 2017

33. Simard argues that a November 15, 2019, email from the former Commissioner regarding the audit preceding Simard Westlink Inc. (CTC Decision No. 01/2020) ("Simard 2020") suggests that the former Commissioner "did not interpret the Statutory Scheme as including domestic repositioning of marine containers and containers owned by railways." Alternatively, Simard argues this email shows "at least" that the "Commissioner's office has not been consistent in the interpretation and application" of the *Act* and this should reduce any penalty.

34. It also argues, citing to *R. v. Jorgensen* [1995] 4 SCR 55 and other cases, that it is entitled to rely on the defence of officially induced error to limit its liability and should only be liable after April 18, 2023 for what it calls "domestic repositioning" moves as that was the date it first received notice that 40-foot containers to and from rail terminals are captured under the *Act*. Simard further submits that it first became aware that 53-foot containers are captured under the *Act* on June 14, 2023, so it should not owe money to drivers before this date for 53-foot container moves.

35. Simard also states that the calculations in the Original Decision – Supplemental incorrectly added a trip rate and PMR for the "bobtail" movement performed by Mr. Brar on March 15, 2023. Simard states that the PMR does not apply to bobtail movements for IOs paid by the trip.

V. Reconsideration

Regulation of off-dock moves

36. The key question is whether the *Act* requires licensees to pay a regulated rate only for movements of containers to or from a marine terminal or also for movements of containers that can and do move through a marine terminal.

37. I am not persuaded by Simard's argument that the Commissioner lacks jurisdiction over the "domestic" repositioning of containers or for moves involving the transportation of "domestic goods" based on some implicit concept of "domestic moves" or based on Simard's interpretation of "container" and "facility."

38. I have addressed in the Original Decision at para 37 the absurdity of Simard's interpretation that only container movements to or from a marine terminal are regulated considering that off-dock container movements, which do not transit through a marine terminal, are regulated.

39. I must also address the use of the terms "domestic repositioning" and "domestic move" and "domestic goods" and "marine goods" upon which Simard so heavily relies. These are not used or defined in the *Act* or the *Regulation* and I cannot find the terms in the Joint Action Plan ("JAP") or the Ready/Bell Report. Nor do the terms factor into the explicit exclusions used in the definitions. I note that that the regulatory definition of "off-dock trip" provides for only two exemptions to container movements between facilities: "off-dock trips" do not include on-dock moves or container movements within a facility. There is no exemption for "domestic" moves. The fact that these terms advanced by Simard are not contemplated or accounted for in any of these documents or the legislation – including alongside other exclusions -- is in my opinion telling.

40. Simard's suggestion that the container movements to and from a rail yard on March 15, 2023 are not regulated is contrary to the explicit inclusion of rail yards in both the JAP and the Ready/Bell Report. Both the JAP and the subsequent Ready/Bell Report contemplate the inclusion of rail yards in the regulated off-dock container moves. The JAP specifically includes CP Rail and CN Rail's intermodal yards as terminals attracting wait time payments and broadly defines the drayage sector as including "the overland transport of cargo to/from barges or rail yards . . . It is also known as truck container pickup from or delivery to a seaport or off-dock terminal (e.g., warehouses, transload centers, rail yards, container storage yards) with both the trip origin and destination in the Greater Vancouver Area" (emphasis added). It is clear from both the JAP and the Ready/Bell Report that container traffic to and from a rail yard needed to be included in the off-dock rates to ensure stability at the ports.

41. The connection between off-dock movements and the stability of operations at marine terminals is addressed in the Ready/Bell Report cited at para. 28 of the Original Decision. The reality is that truckers who work for licensees do not just travel to and from marine terminals all day – they also "spend considerable time moving containers at off-dock facilities."[1] The application of regulated off-dock rates to container movements within the Lower Mainland was meant to ensure that drivers were paid for off-dock container trucking services performed by licensees.

42. In so far as Simard maintains that the Containers themselves do not meet the regulatory definition of "container" and/or the start and end points of each location do not meet the definition of

[1] Ready/Bell Report, found at Part 4 - Major Issues, c) Rates of Pay ii) off dock

"facility" (both necessary to meet the definition of "off-dock trip"), I have addressed each issue below.

Meaning of "container"

43. I set out my reasons for why a container that does not directly or immediately transit through a marine terminal is caught by the *Act* at paras. 24-41 of the Original Decision. Among other things I pointed out that Simard's interpretation would effectively make the off-dock rates initially set by the LGIC and now by the Commissioner meaningless. I outlined why a container's immediate use is not necessarily determinative of whether a container fits the regulatory definition at paras. 43-45. Nothing in Simard's additional submissions has changed my analysis.

44. One of Simard's main arguments is that "implicit in the definition of 'container' is that containers are used for the marine transportation of goods." I do not find the fact that the Containers were not used for marine transportation on March 15, 2023 determinative of whether they meet the definition of "container" or whether a driver is performing "container trucking services." The fact that a container is not immediately or imminently on the ocean does not on its own change the fact that the container is "furnished or approved by an ocean carrier for the marine transportation of goods." Nor does the fact that its contents on any given trip originate from a company in Ontario (what Simard calls "domestic goods").

45. I note in the Original Decision (para. 28) that the scope of off-dock work also includes empty containers. Simard's premise that the Commissioner's jurisdiction only extends to containers "where the goods in question are marine goods" – however "marine goods" might be defined – would eliminate empty containers. Such a proposition would be directly contrary to empty containers being considered off-dock moves in the Ready/Bell report (see Original Decision, para 28).

46. A container can be furnished by an ocean carrier for the marine transportation of goods or approved by an ocean carrier for the marine transportation of goods and the decision of the owner to use the container almost exclusively on land or for "domestic goods" or to move it without goods inside of it does not automatically change the nature of the container. The container is still capable of circulation through marine terminals.

47. Simard's position would mean that containers that are "furnished or approved by an ocean carrier for the marine transportation of goods" and are moved by licensees between facilities in the Lower Mainland would be in or out of the regulatory scheme depending on their immediate use (whether they are being used for on or off-dock trips at any given time). This would require determining when exactly each metal box furnished or approved by an ocean carrier for the marine transport of goods becomes a "container" ("turns into a pumpkin") and vice versa at every stage of its journey in the Lower Mainland.

48. The result of such an approach would be a multi-tiered (regulated and unregulated) rate structure and a perpetual battle to determine if each off-dock container movement is captured under the *Act* based on each container's travel route and the purpose of each movement. Auditors would be required to evaluate the travel route and purpose of each of the thousands of containers moved

throughout the Lower Mainland each day and this would make off-dock enforcement impossibly complex

49. I do not agree that the definition of "container" should depend on how the container is being used at any given time. If the LGIC intended "container" to be defined based solely on its immediate use, it could have easily defined "container" as "a metal box in use for the marine transportation of goods." I note s. 7(1) of the *Interpretation Act* states that an enactment must be construed as always speaking and find that this applies to the definition of "container" – in other words, whether a metal box qualifies as a "container" cannot depend on where it is moving (or what it is carrying) at any given time. A metal box is either furnished or approved by an ocean carrier for marine transport or it is not. Its status does not change on a daily basis based on how it is used or what it is carrying or whether it is carrying anything at all.

50. By way of an analogy, if a resident of Coquitlam, BC purchases a vehicle on Vancouver Island and drives it back to her residence using BC Ferries and never brings that vehicle on BC Ferries again, those facts alone do not mean that the vehicle is not furnished or approved to go on a BC Ferries vessel. I find that the same approach should be taken when assessing whether a container is "furnished" or "approved" for the marine transportation of goods. The fact that a container is capable of being transported by an ocean carrier laden with goods means that it is a "container" under the *Act*.

51. "Containers" are built to withstand ocean transport and identification of the container's owner, the presence of 4 letter identification codes consistent with marine containers, a valid CSC plate and the actual presence of these types of containers on an ocean carrier are all good indicators of whether a container is "furnished or approved by an ocean carrier for the marine transportation of goods," as set out in paras. 44-45 of the Original Decision and para. 18 of the Decision Notice.

52. I do not accept Simard's submission that the CSC plate, because it is not issued by ocean carriers but rather by an international regulatory body, is meant only to protect "human life in the transport and handling of containers" and does not speak to whether a container is built to standards allowing it to be used for the marine transport of goods. The CSC plate includes specific details including the container's maximum operating gross weight and allowable stacking weight. In the photograph of the CSC plate for CP container identified as QDCM22G12064, it is explicitly stated that "maximum operating gross mass is "for sea transportation.". The presence of such information suggests that the container is certified to carry goods up to a specified weight while being transported by an ocean carrier. This is supported in Mr. Teixeira and Mr. Beatons' respective emails which expressly state that the CSC plate affixed to the CP Rail and Canadian Tire containers is there in case they want to move cargo in the container while it is being shipped over the ocean. In other words, the CSC plate is necessary to satisfy the ocean carrier that the container can be used to move goods on the ocean carrier. I find that the presence of a plate from an international regulatory body indicating that a container is safe to be loaded on a ship with a certain cargo limit assures ocean carriers that they can safely furnish or approve the container for the marine transport of goods. Simard's Reconsideration Submission largely (with the exception of those containers with expired CSC plates dealt with below) fails to rebut the presumption based on the indices of a container outlined above that that the Containers have been furnished or approved by

ocean carriers for the marine transportation of goods and instead relies heavily on what the customers – generally non-ocean carriers – chose to use the containers for on March 15, 2023.

53. Given the intermodal nature of container movements (between ocean carrier, truck and rail), most metal boxes in the drayage sector meet the regulatory definition of "container." Despite this, the OBCCTC has since its inception received submissions that certain containers are not "containers" and that certain container movements are therefore exempt from the *Act*. By way of example, in Ferndale Transport Ltd. (CTC Decision No. 22/2016), the licensee claimed that its drivers were moving "dry van" and "flat deck" containers outside the scope of the *Act* but upon investigation the then-Commissioner determined that the containers were within the scope of the *Act.*

54. I must address Simard's submissions on 53-foot containers owned or used by CP Rail. My understanding in this case is that railway-owned containers are synonymous with 53- foot containers. I note the only railway-owned (i.e. 53-foot) containers involved on March 15, 2023 were those identified with the prefix CPPU; there were no containers with the prefix CDAU or EMHU identified.

55. A container's dimensions (as long as it is a "box") are not relevant to whether a container is "furnished or approved by an ocean carrier for the marine transportation of goods." I do not find Simard's inclusion of an email from Mr. Parker at Deltaport – the operator of a marine terminal -- that the terminal does not have the ability to load 53-foot containers helpful. I am not prepared to conclude from one marine terminal's infrastructure that 53-foot containers cannot be furnished or approved by an ocean carrier for the marine transportation of goods, and I note that Mr. Parker acknowledges that 53-foot containers – albeit infrequently – do transit through Deltaport.

56. Again, the email from CP Rail openly acknowledges that it sometimes uses 53-foot containers affixed with a CSC plate to transport goods by an ocean carrier on their initial voyage to North America. This also appears to be acknowledged by Mr. Beaton regarding containers from Canadian Tire. Furthermore, Mr. Erno and Mr. Parker acknowledge that 53-foot containers can come through their respective terminals. The presence of a decal labelled "domestic container" may confirm that the container was not "furnished" for the marine transportation of goods, but it does not rule out that the container is "approved" by an ocean carrier for the marine transportation of goods. The presence of the CSC plate alongside a separate "domestic container" tag indicates that it is able to be used for the marine transportation of goods. Furthermore, the "furnished or approved" status of a container does not disappear after its transit through a marine terminal or as a result of its being used for something other than ocean transport.

57. However, I note that the CP Rail representative states that the CSC plates attached to its containers expire 30 months after the manufacturing date of the container and their practice is not to renew them. My review of the manufacturing dates provided by CP Rail of those of the Containers owned by CP Rail shows that only one of the three with the prefix CPPU was manufactured less than 30 months prior to March 15, 2023. An expired CSC plate would mean that the container was no longer capable of being "furnished" or "approved" by an ocean carrier for the marine transport of goods. CPPU237220 was the only one of the Containers with the prefix CPPU with a valid CSC plate and is therefore the only CPPU container that qualifies as a "container" under the *Act.* My logic here is that a container without a valid CSC plate will no longer be capable of circulating

through marine terminals because it cannot be furnished or approved by an ocean carrier for the marine transport of goods.

Meaning of "facility"

58. Simard's argument that "facility" means only a location where a container is dealt with "for [marine] shipping" is not consistent with the language, context or purpose of the *Act*.

59. Applying Simard's argument to a rail yard, a rail yard in the Lower Mainland could simultaneously be a "facility" and not be a "facility" depending on the specific journey of each container that spends time there. If a container arrives at a rail yard from a storage facility and returns to the rail yard without transiting through a marine terminal, this would mean the rail yard would not be a "facility" because that particular container would not have been dealt with (loaded, unloaded, etc.) "for [marine] shipping" during its stay at the rail yard. However, if a container is moved from a rail yard destined for a marine terminal, the rail yard would be considered a "facility" because the container would have been dealt with (loaded) "for [marine] shipping" during its stay at the rail yard.

60. Licensees move thousands of containers throughout the Lower Mainland each day and those containers are "stored, loaded, unloaded, transloaded, repaired, cleaned, maintained or prepared for shipping" in hundreds of locations within the Lower Mainland. If the OBCCTC had to confirm whether each container at each location was being "stored, loaded, unloaded, etc." for marine shipping or for another type of shipping in order to determine whether the location is a "facility," its auditors would be bogged down in an endless paper trail.

61. I do not accept that the "shipping" in the definition of "facility" includes only marine shipping. The Miriam Webster dictionary[2] defines shipping as both "to place or receive on board a ship for transportation by water" and "to cause to be transported."

62. Containers used for the marine shipment of goods are intermodal containers that are manufactured such that they can be shipped by ocean vessels, rail carriers, and trucks. Again, the inclusion of CN and CP Rail yards in the JAP and Ready/Bell Report and in the off-dock rate table, and the inclusion of locations in the Lower Mainland only accessible by truck in the off-dock rate table, underscores that "shipping" was not meant to be limited to "marine" shipping.

63. I also find the explicit exclusion of "marine terminal" from the definition of "facility" supports the broader interpretation of "for shipping" as meaning "for transportation" in general. If a "facility" cannot include a "marine terminal," then a facility must include locations where a container can be dealt with for other than marine transport.

64. I also find that broad definition of shipping as "to cause to be transported" to be more consistent with the beneficial purposes of the *Act,* which clearly include compensating truckers while they are performing off-dock container trucking services.

[2] https://www.merriam-webster.com/dictionary/ship

"Specified" container trucking services

65. I cannot agree that "specified container trucking services" or "specified circumstances" in section 22(1)(a) of the *Act* limits the application of the rates to container trucking services that require access to a marine terminal. Section 2 of the *Regulation* defines "prescribed container trucking services" expressly "for the purposes of section 16(1) of the *Act*." Based on a plain reading, the term "specified" in s. 22(1) refers to those items specified by the Commissioner (formerly the LGIC) in s. 21(c). Section 22 does not restrict the Commissioner (formerly LGIC) to setting rates for only one type of container trucking services (e.g. only moves that transit through marine terminals). Section 22(1)(c) contemplates setting rates based on "one or more" of the starting point, the end point, the geographic area, etc., of those container trucking services, which clearly allows for rates for moves that do not transit through a marine terminal. This interpretation is consistent with the initial introduction by the LGIC of the off-dock rates and the inclusion of CN Rail and CP Rail yards in the JAP and Ready/Bell Report as mentioned above and in the Original Decision and Decision Notice. The Commissioner's Rate Order now sets off-dock rates, including for trips involving rail terminals, within the Lower Mainland.

66. To interpret s. 22 of the *Act* in the manner advanced by Simard would have left the LGIC (and subsequently the Commissioner) unable to regulate off-dock rates for container movements outside a marine terminal for the simple reason that off-dock moves do not transit through a marine terminal.

67. To summarize, the "one or more" circumstances and "one or more" container trucking services" in s. 22 are not restricted by the "prescribed services" set out in s. 16. When read together with the rest of the *Act*, s. 22 permits the Commissioner to require licensees to pay regulated rates for a "container" that is transported between two "facilities" in a geographic area that extends beyond the perimeters of a marine terminal.

68. I also reject Simard's argument (in its July 25, 2023 submission to the Court) that truck tags are issued for "prescribed" container trucking services only. Section 18 of the *Act* permits the Commissioner to impose any condition that the Commissioner considers necessary and sections 6.15 and 6.16 of the 2022 CTS licence require that licensees carry out container trucking services using tagged trucks. In other words, the license does not require tags for only those trucks performing "prescribed" (on-dock) CTS work.

Access to marine terminals and corporate restructuring

67. Simard suggests that the legislature could not have meant for the *Act* to extend beyond "prescribed" container trucking services because a simple corporate restructuring would allow licensees to avoid the off-dock rates. First, I cannot accept that the presence of loopholes in any legislation means that the legislature did not intend to capture the very thing a person is trying to avoid by using said loophole. I note that the effort to create a fair and equitable tax scheme is paved with opportunistic loopholes that are then closed.

68. Second, while Simard raises a hypothetical loophole in the way of a hypothetical corporate restructuring, the fact remains that Simard is the licensee, and it was Simard's vehicles that were found performing off-dock untagged work.

Reasons

69. I noted at para. 40 of the Original Decision, citing a decision of Commissioner MacPhail from 2016, that container movements to and from rail yards have been captured by the *Act* since 2016. In its Reasons for dismissing Simard's application for an injunction the Court rejected Simard's argument that the Original Decision was a new interpretation related to the application of the *Act* to "domestic moves" (para. 85).

70. In its Reasons the Court also found that "the argument that it is patently unreasonable to interpret the *Act* in a way that gives the Commissioner jurisdiction over the movement of containers in circumstances that are wholly unrelated, either directly or indirectly, to the movement of containers and their contents through marine terminals is not a frivolous argument" (emphasis added). The Court also observes at para. 59 that, based on an October 2022 Industry Advisory, the Commissioner appears to have accepted that there had to be some connection between a container movement and a marine terminal because the Advisory states that the *Act* "was intended to regulate on-dock and off-dock container trucking services in the Lower Mainland (container trucking services that require access to marine terminals at some stage)"(emphasis added). The Court notes that this statement could mean that a container movement that is wholly unrelated, directly or indirectly, to the movement of containers through marine terminal is not captured by the *Act.*

71. It is not clear whether Simard accepts that moves "indirectly" or "at some stage" related to a marine terminal are captured by the *Act*.[3] As will be clear from this reconsideration, licensees engaged in container moves that are "indirectly" or "at some stage" related to a marine terminal are caught by the *Act*. As a result, most, if not all, container movements in the Lower Mainland by licensees will be covered by the *Act*.

72. In terms of the possibility of container movements that are "wholly unrelated" to a marine terminal, where a metal box does not have the indices of a "container" outlined in the Original Decision, the movement of that metal box is likely to be "wholly unrelated" to a marine terminal since the metal box cannot and will not travel through a marine terminal.

73. All metal boxes that come through a marine terminal when they arrive in North America have been furnished or approved by an ocean carrier for the marine transport of goods and are therefore "containers" under the *Act*. Their status as "containers" confirms they are "related" to a marine terminal. If that alone did not make them "containers" then the question would become: how many steps removed from a marine terminal does a container have to be before it is no longer

[3] There is one sentence in Simard's October 12, 2023 submissions where it says that the Commissioner has jurisdiction "where the goods in question are marine goods and access to a marine terminal is required at some stage" (emphasis added).

"indirectly related" to a marine terminal? How many trips after, or in advance of, a trip to a marine terminal would be required to make a trip "wholly unrelated" to a marine terminal?

74. Also, parsing out whether container movements are "indirectly related" or instead "wholly unrelated" to marine terminals based on something other than the indices of a "container" would create a hodgepodge of regulated and unregulated rates punctuated by endless interpretative debates about which container moves are "indirectly" or "wholly unrelated" and hinder the ability to effectively enforce off-dock rates – all of which would be contrary to the purposes of the *Act.*

75. In my opinion, the *Act* requires licensees to pay regulated rates for movements of containers that can and/or do travel through a marine terminal, containers that are "furnished or approved by an ocean carrier for the marine transportation of goods." I do not believe that the purpose of the *Act* (ensuring stability in the Lower Mainland drayage industry as a whole) would be served by an interpretation that requires determining whether a container move is directly, indirectly or wholly unrelated to a marine terminal on a case-by-case basis. Rather, such reading would compromise The ability of the OBCCTC to effectively audit and enforce rates. It would also be inconsistent with my interpretations of "container," "facility," and "prescribed" as compared to "specified" container trucking services, set out above.

76. Most of the above may be academic in Simard's case, however. All the Containers on March 15, 2023, with the exception of the containers with the expired CSC plate, were "containers" and therefore related to marine transportation, at least indirectly. All of the Containers, with the exception of those with the expired CSC plate, also had other indices of having been furnished or approved by an ocean carrier for the marine transport of goods.

Alleged prejudice

77. *Jorgensen* sets out six elements that must be met to establish a defence of officially induced error:

- That an error of law or of mixed law and fact was made;
- That the person who committed the act considered the legal consequences of his or her actions;
- That the advice obtained came from an appropriate official;
- That the advice was reasonable.
- That the advice was erroneous; and
- That the person relied on the advice in committing the act.

78. I am also not persuaded that Simard received erroneous advice or has been prejudiced by any previous OBCCTC statements that would lead it to believe it could move containers to and from rail yards without paying the regulated rates. I rejected Simard's reliance on Simard 2020 at para 12 of the Original Decision. The November 15, 2019 email cited by Simard merely states that containers owned by railways are not "containers" and references the CNTL decision (defined below). I do not find that the email assists Simard. I am not aware of the facts in front of the then-Commissioner, but if a container was owned by a railway and did not have a CSC plate, then of course it would not fit the definition of a "container." Furthermore, I point out that the Containers dealt with in the current Simard matter include containers that are not owned by a railway.

79. Even if I am wrong about the email and the Simard 2020 decision, any alleged reliance on Simard's part should have reasonably been cleared up by the many advisories, bulletins and decisions advising licensees of the requirement to use tagged trucks when performing off dock-work, as mentioned in the Original Decision and referenced again in the Decision Notice (para 11) (see *R. v. Eckert*, 2011 ABPC 323). In the April 17, 2020 bulletin –which I note was published after the Simard 2020 decision -- the then-Commissioner warns licensees not to rely on Canadian National Transportation Ltd. (CTC Decision No. 02 2019) ("CNTL") because that decision has unique factors, and its findings were the purposes of that audit only. The bulletin goes on to clarify that container moves to and from CN Rail and CP Rail intermodal facilities have always attracted off dock-rates (both prior to and after the CNTL decision).

80. I do understand Simard may have been under the misapprehension that 53-foot containers do not meet the regulatory definition of "container" based on the Simard 2020 decision. As I understand it, 53-foot containers have historically been built and used exclusively in North America for the shipment of goods by rail and truck and may therefore not have qualified as "containers" under the *Act*. Overseas manufacturers have more recently began building and selling differently constructed 53-foot containers into the North American market, which containers are capable of ocean transport. This appears to be consistent with the presence on 53-foot containers of a container number consistent with all other marine containers, the presence of a CSC plate consistent with all other marine containers, and the acknowledgment from CP Rail that they can use their 53-foot containers to transport goods over the ocean. In other words, the OBCCTC has not broadened the definition of "container" to include 53-foot containers. Rather, 53-foot containers may now be capable of being furnished or approved by an ocean carrier for the marine transportation of goods and therefore captured by the *Regulation.*

81. Although I can see how these changes may have led to some misapprehension about the applicability of the *Act* to 53-foot containers, the majority of the Containers involved on March 15, 2023(those with prefixes EMCU, UACU, DRYU, TLLU, TXGU, TCLU and EITU) are not 53-foot containers or owned by a railway and had other indicators of being furnished or approved by an ocean carrier for the marine transport of goods.

82. Considering the above, I will not require Simard to pay Mr. Brar the regulated rate for movement of CPPU237220 or to review its payroll records related to 53-foot containers. However, going forward, Simard and industry as a whole should note that the dimensions of a container are not necessarily relevant to whether it qualifies as a "container" and the presence of four letter identification codes consistent with marine containers, the presence of a valid CSC plate, and the actual presence of these types of containers on an ocean carrier are generally sufficient to demonstrate that the container is "furnished or approved by an ocean carrier for the marine transport of goods."

Monies owing to two drivers for March 15, 2023

83. I also accept Simard's submission that the bobtail trip performed by Mr. Brar, an IO, on March 15, 2023, did not attract a trip rate as it was already covered by the PMR.

84. Based on the above, I find Mr. Brar is owed $114.12 for March 15, 2023, as follows:

From	To	Container Number	Trip Rate+ Wait Time Paid	Trip Rate Owed	PMR	Difference Owed
CP Rail Yard	Rolls Right Terminal	EMCU863256	$125.35	$131.00	$25.00	$30.65
Rolls Right Terminal	CP Rail Yard	EMCU863256	$72.53	$131.00	$25.00	$83.47
						$114.12

VI. Conclusion

85. I find that the only time that "off-dock" rates do not apply to licensees moving containers between facilities in the Lower Mainland is when licensees are performing on-dock trips or container movements within a facility. To put it another way, if the licensee is moving a "container" between "facilities" in the Lower Mainland, it is performing an off-dock trip and the regulated rates and conditions of the licence apply.

86. Based on my findings above, I reject Simard's argument that none of the container moves on March 15, 2023 are captured by the *Act*. I find that all of the moves of the Containers on March 15, 2023, with the exception of the moves of those containers with an expired CSC plate, are covered by the *Act*.

87. With this decision, the drayage sector should be fully aware that terminology like "domestic moves" or "domestic repositioning" or "domestic container" or "53-foot containers" or "railway owned containers" are not trump cards that absolve licensees from paying the regulated rates. I will also repeat: containers moving within the Lower Mainland to and from a rail yard also require a trucker to be paid a regulated rate.

88. Given my finding in the Supplemental Decision that Mr. Kim was paid the regulated rate and my current finding that significantly less than the amount determined in the Original Decision is owing to Mr. Brar, I will reduce the penalty.

89. For the purposes of this reconsideration, I am prepared to accept that Simard may have been under a misapprehension that 53-foot containers owned by railways do not meet the definition of "container" and I will not require that Simard include same in its recalculation.

90. I note in response to Simard's question regarding the date range for which it is required to review its payroll records, that the reason for the repayment calculation over a four-year period is

consistent the requirement to maintain payroll records for four years and is the period of time licensees are generally required to review.

91. In summary, the application for reconsideration is granted in part.

92. I will vacate the order regarding payment to Mr. Kim for March 15, 2023.

93. I will amend the order regarding Mr. Brar as follows:

> I order Simard to pay Mr. Brar $114.12. for March 15, 2023 and provide proof of having done so to the OBCCTC within 30 days of the date of this reconsideration.

94. Furthermore, I will amend the order requiring Simard to review its payroll records as follows:

> I order Simard, no later than six months after the date of this reconsideration (or, if Simard continues its judicial review, no later than six months after the outcome of the judicial review) to:
>
> a. Review its payroll records from September 1, 2019 to August 25, 2023 and make the appropriate adjustments to bring itself in compliance with the *Act.* In particular, Simard must ensure that it has paid its drivers off-dock rates for all off-dock container trucking services work from September 1, 2019 to August 25, 2023. For the purposes of this order only (but not for future purposes), Simard may exclude 53-foot containers. For the purposes of this order and going forward Simard may exclude containers with an expired CSC plate from its calculations.
>
> b. Advise the Commissioner of any adjustments made and provide proof of payment to its drivers of the same.

95. I will reduce the administrative penalty set out in the Decision Notice to $8,000.00 on the basis that the financial harm suffered by the drivers on March 15, 2023 was less than originally found and because some of the Containers had expired CSC plates. I note that Simard has been the subject of previous decisions for underpayment of wages and I find the amended penalty reflects the need to deter Simard from continued underpayment of drivers and to encourage it to use tagged trucks and truckers from the IO List.

96. As Simard has already paid the penalty originally imposed, $4,000.00 will be repaid to Simard pursuant to s. 35(4) of the *Act*.

97. With the exception of the above, I dismiss Simard's application for reconsideration.

This reconsideration will be published on the Commission's website.

Dated at Vancouver, B.C., this 22nd day of February, 2024.

Glen MacInnes
Commissioner

August 25, 2023

Simard Westlink Inc.
16062 Portside Road
Richmond, BC V6W 1M1

Commissioner's Decision
Simard Westlink Inc. (CTC Decision No 09/2023)

Introduction

1. Simard Westlink Inc. ("Simard") is a licensee within the meaning of the *Container Trucking Act* (the "*Act*").

2. Section 16(1)(b) of the *Act* states that a licensee must carry out the container trucking service in compliance with:

    (i) this Act and the regulations,

    (ii) the license, and

    (iii) if applicable, an order issued to the person under the Act.

3. Under sections 22 and 23 of the *Act,* minimum rates that licensees must pay to truckers who provide container trucking services are established by the Commissioner via the Rate Order and licensees must comply with those statutorily established rates. Section 23(2) states:

    > A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

4. Under section 31 of the *Act*, the Commissioner may conduct an audit or investigation to ensure compliance with the *Act,* the *Container Trucking Regulation* (the "*Regulation*"*)* or a licence.

5. Simard has been the subject of three other decisions. In 2016, the Commissioner found that it had underpaid drivers by a total of $79,989.31; this amount was repaid, and the Commissioner exercised his discretion not to issue a penalty: *Simard Westlink Inc*., CTC Decision No. 07/2016 ("Simard #1"). In 2020, the Commissioner found that Simard had underpaid its drivers by $33,596.02. Simard was ordered to compensate the drivers and to pay an administrative fine of $2,000.00 ("Simard #2"): *Simard Westlink Inc.,* (CTC Decision Notice, No. 01/2020). In 2023, I found

that Simard had underpaid one of its drivers $884.83 when it improperly calculated his fuel surcharge amount. I ordered Simard to pay this amount but exercised my discretion and did not issue an administrative penalty ("Simard #3): *Simard Westlink Inc.,* (CTC Decision Notice, No. 05/2023).

6. Simard currently operates under a container trucking services ("CTS") licence that came into force on December 1, 2022 ("2022 CTS licence"). Section 6.15 of the CTS licence states: "The Licensee must carry out Container Trucking Services using only Truck Tags allocated by the Commissioner on the conditions imposed by the Commissioner." Section 6.16 requires licensees to assign a truck tag to each truck performing CTS services.

7. On March 15, 2023, two trucks belonging to Simard were observed performing what appeared to be untagged container trucking services in the Lower Mainland. A truck with licence plate PT2078 was transporting container EMCU8632562451G1 at or near Kennedy Road in Pitt Meadows. Another unit with licence plate RN6207 (Penske vehicle) was transporting container TXGU5853257451G1 at or near Kennedy Road in Pitt Meadows (together, the "Impugned Containers"). Neither truck displayed a truck tag as required by the CTS licence when performing container trucking services.

Background

8. On April 18, 2023, the Office of the BC Container Trucking Commissioner ("OBCCTC") advised Simard that it had begun an investigation into whether the container movements observed on March 15, 2023 were authorized as the *Act, Regulation*, and CTS licence make it an offence to carry out prescribed container trucking services within the Lower Mainland with an untagged truck. Simard was invited to provide a submission. The OBCCTC also requested payroll records and trip sheets for the drivers performing the work on March 15, 2023.

9. On April 26, 2023, Simard provided a submission arguing the Impugned Containers do not fit the definition of a "container" as set out in the *Regulation* because they did not involve a "marine component" and were therefore not covered under the *Act.* Simard did not respond to the request for records.

10. On May 16, 2023, I provided Simard with a copy of an investigation report (Investigation Report #1) and an opportunity to provide a further submission by May 25, 2023. Simard did not provide a submission by May 25, 2023.

11. On May 26, 2023, I issued an order ("Order") based on my finding that Simard had performed off-dock trips on March 15, 2023 when it moved "containers" as defined in the *Regulation* between two facilities within the Lower Mainland with trucks that were not tagged in accordance with its CTS license and s. 16(1)(b)(ii) of the *Act*. I ordered Simard to provide the payroll records and trip

sheets of each driver who performed the work described on March 15, 2023, and I also ordered Simard to cease and desist from using untagged trucks to perform CTS work in contravention of its CTS license.

12. On June 2, 2023, Simard provided copies of March 15, 2023, payroll records and trip sheets as per my Order and advised that it had not received Investigation Report #1 on May 16, 2023.

13. On June 5, 2023, Simard advised that it continued to disagree with the Commissioner's view of the requirements of the *Act, Regulation*, and CTS licence and intended to seek judicial review of the Order. It requested that the Commissioner suspend enforcement of the Order pending the resolution of the proceeding.

14. On June 14, 2023, I provided Simard with a copy of a supplemental investigation report (Investigation Report #2) and an opportunity to provide further submissions by June 25, 2023.

15. Based on the payroll records provided by Simard and the information collected by the OBCCTC, my preliminary assessment was as follows:

    a. The Impugned Containers met the definition of "container" for the reasons set out in the Order.

    b. Additional containers identified in the March 15, 2023, payroll documentation supplied by Simard ("Additional Impugned Containers") also met the definition of "container" in the *Regulation*.

    c. The Impugned Containers and the Additional Impugned Containers were moved between the following facilities in the Lower Mainland on March 15, 2023, by the following drivers:

Driver	**From**	**To**	**Container Number**
G.Brar	CP Rail Yard	Rolls Right Terminal	EMCU863256
G.Brar	Rolls Right Terminal	CP Rail Yard	EMCU863256
G.Brar	CP Rail Yard	Purolater Richmond	CPPU236082
G.Brar	Purolater Richmond	Western Canada	"Bob tail" (meaning no container or trailer)
G.Brar	Western Canada	TJX Canada	CPPU237220
G.Brar	TJX	CP Rail Yard	CPPU234089
S.Kim	CP Rail Yard	Toys R Us	UACU527276
S.Kim	Toys R Us	CP Rail Yard	Empty
S.Kim	CP Rail Yard	Van Kam	DRYU912237

Driver	From	To	Container Number
S.Kim	Van Kam	CP Rail Yard	TLLU405617
S.Kim	CP Rail Yard	Simard Westlink Yard	TXGU585325
S.Kim	Simard Westlink Yard	CP Rail Yard	EITU138429
S.Kim	CP Rail Yard	Rolls Right Terminal	TCLU888393
S.Kim	Rolls Right Terminal	CP Rail Yard	TCLU888393

d. The wages paid to the drivers moving the Impugned Containers and the Additional Impugned Containers were not in accordance with the Rate Order as follows:

   i. Mr. Kim, a directly employed operator, was paid $0.68 an hour less than the minimum rate set out in the Rate Order and worked a total of 9.25 hours.
   ii. Mr. Brar, an independent operator, was paid $732.68 less than he should have been based on the trip rates, Position Movement Rate, and Fuel Surcharge set out in the Rate Order.

e. Another $445.98 was improperly deducted from Mr. Brar's compensation for an unidentified reason and $22.30 was improperly deducted for GST.

f. Simard retained the services of an independent operator (Mr. Brar) who is not on the IO list and does not have a sponsorship agreement as required.

16. Simard provided a submission in response on June 16, 2023 stating as follows:

a. Simard has responded promptly to the Commissioner's correspondence upon receipt and provided disclosure of documents ordered to be produced;

b. The material facts related to Simard's movement of the Impugned Containers and the Additional Impugned Containers are not in dispute;

c. The Commissioner erred in his Order when he determined Simard's movement of the Impugned Containers was in breach of Simard's CTS license;

d. Simard's movement of the Additional Impugned Containers are authorized for the reasons summarized in its April 26, 2023 submission;

e. The calculations in Investigation Report #2 are incorrect and Simard reserves it right to particularize the errors at a later unspecified date; and

f. Some unidentified containers listed in Investigation Report #2 are not suitable for container ships.

17. Simard maintains that the Impugned Containers and the Additional Impugned Containers are not covered by the *Act* because they were "mostly sourced from intermodal rail destined for a warehouse or intermodal rail" and were not travelling directly to or from a marine terminal. Simard argues that the lack of a container's connection to the Port of Vancouver means that the *Act* does not apply.

18. In its most recent submission Simard states that this "dispute is over the interpretation of the *Act, Regulation*, and Simard's CTS licence" in respect of what it calls "container domestic moves" and advises again that it intends to seek judicial review. It requests that the Commissioner suspend enforcement of the May 26 Order pending resolution of the judicial review.

19. Simard has since brought an application for judicial review of the Order.

Decision

20. As described above, the circumstances of this case are:

a. Two Simard trucks were observed on March 15, 2023 moving the Impugned Containers and leaving the CP Rail yard on Kennedy Road in Port Coquitlam. The Simard trucks delivered the Impugned Containers to other facilities within the Lower Mainland.

b. The Simard trucks are owned/or operated by Simard and they were untagged and were driven by Mr. Kim and Mr. Brar.

c. On May 26, 2023, after an investigation, I found that the Impugned Containers met the definition of "container" in the *Regulation* and had been moved by Simard trucks. I ordered Simard to provide payroll records and trip sheets for the drivers associated with the Impugned Containers and to cease and desist from using untagged trucks to perform CTS work in contravention of its CTS license.

d. On June 2, 2023, Simard provided copies of records associated with the Impugned Containers which also identified the Additional Impugned Containers moved on March 15, 2023 by the two Simard trucks between facilities located within the Lower Mainland.

e. On June 14, 2023, after further investigation, the OBCCTC provided Simard with a supplementary investigation report (Investigation Report #2) which included preliminary findings that the Additional Impugned Containers were also "containers" under the *Act* and

Regulation and that the drivers of the Simard trucks were not paid in accordance with the Rate Order for the container movements on March 15, 2023. One driver was also found to have had monies improperly deducted from his pay. It also determined that Mr. Gurpreet Brar, an independent operator who moved one of the Impugned Containers on March 15, 2023, is not on the IO List and does not have a valid sponsorship agreement with Simard as required by the CTS License.

f. On June 16, 2023, Simard submitted it did not dispute the material facts regarding the events of March 15, 2023, but that some unidentified containers are not suitable for container ships and the calculation of underpayment of drivers contains unidentified errors. Simard's position is that since the movements of the Impugned Containers and the Additional Impugned Containers did not have a marine component or involve marine access to a terminal within the Port of Vancouver, they fall outside the scope of the *Act.*

21. The question here is whether the movements of the Impugned Containers and Additional Impugned Containers between a rail facility and another Lower Mainland facility are captured under the *Act*?

22. Simard says that these movements are not captured by the *Act* because they involve "containers originating in Canada, destined within Canada, and not touching a port." It says that since the Impugned Containers and the Additional Impugned Containers were delivered by CP Rail to its intermodal yard in the Lower Mainland, loaded onto trucks operated by Simard, and transported to a Lower Mainland location other than a marine terminal for unloading, their movement is not within the scope of the *Act.*

23. For the following reasons, I am not persuaded that the movements of containers with the Lower Mainland that are not directly to or from a marine terminal within the Port of Vancouver are outside of the *Act*.

24. Simard does not understand that the fact that it has a license to access a marine terminal in the Lower Mainland also requires it to pay the rates set out in the Rate Order even when it is not accessing a marine terminal. I find Simard's suggestion that the only CTS work captured by the *Act* is work directly associated with the reason a company requires a license (i.e., to access a marine terminal) is inconsistent with the legislative scheme.

25. One of the main principles of statutory interpretation was recently cited in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para 117:

> the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the

intention of Parliament.

26. It is important to understand the historical context that gave rise to the current legislative scheme covering container trucking in the Lower Mainland in order to better understand the intention of the legislature regarding off-dock work (i.e. work that does not require direct access to a marine terminal).

27. After a number of work stoppages in the Lower Mainland drayage sector due to undercutting of wages by drayage companies, a Joint Action Plan ("JAP") between the Government of Canada and British Columbia and recognized representatives of container truck drivers was signed in 2014. The JAP contained the following commitment:

> Canada and B.C. further commit to put in place a new mechanism to ensure off dock trips (including within a property or between properties) are remunerated consistent with the revised regulated rates, and the Government of Canada will expedite its 2014 Regulatory Framework Review which will assess the current wage and fuel surcharge rates. (emphasis added)

28. Corrine Bell and Vince Ready were then commissioned to provide recommendations ("the Ready/Bell Report")[1] to implement the JAP, including recommendations around off-dock rates. The Ready/Bell Report noted that off-dock rates were not regulated and that "without adequate compensation (for off-dock movements) this is a significant concern as it directly impacts independent owner-operators, especially those who spend considerable time moving containers at off dock facilities." The Ready/Bell Report defined the scope of the off-dock work, stating as follows:

> There is also significant activity associated with the repositioning of empty containers between off-dock terminals, rail yards, storage yards, and marine terminals, as well as "bob-tail" runs (i.e., tractors without containers) to pick up loaded and/or empty containers. We understand off-dock moves to primarily include the following:
>
> - "trip legs" that do not involve a port terminal; and
> - Empty container movements that are subsequently trucked to and stored at empty container terminals while they await export.

29. The Ready/Bell Report set out a "time/distance benchmark matrix" for the movement of containers throughout the Lower Mainland not involving movements directly to or from a marine terminal and emphasized that its recommendations were "limited to those companies that hold a license to service the port but capture such companies for both on and off-dock container movements."

[1] Vince Ready and Corrine Bell, Recommendation Report – British Columbia Lower Mainland Ports, September 25, 2014.

30. The *Act* was passed by the legislature in 2014 and empowered the Lieutenant Governor in Council (LGIC) to set the initial rates with reference to the starting and end points of the container trucking services, "the geographic area within which the container trucking services are carried out" and the "duration or distance travelled." The *Regulation* includes a definition of "off-dock trips" and the "time/distance benchmark matrix" for off-dock rates as recommended in the Ready/Bell Report. Initial rates were established, including rates for movements between facilities in the Lower Mainland that are not marine terminals. Initially, s. 12 and Schedule 1 of the *Regulation* set out off-dock trip rates, listing twenty-five geographic areas between West Vancouver and Chilliwack, BC.

31. The Commissioner now sets the rates via the Rate Order based on this framework.

32. The *Act* defines "container trucking services":

> "container trucking services" means the transportation of a container by means of a truck.

33. The *Regulation* defines "off-dock trips" to mean:

> "off-dock trip" means one movement of one or more containers by a trucker from one facility to a different facility in the Lower Mainland, but does not include:
>
> an on-dock trip, or
>
> a movement of a container from one location in a facility to a different location in the same facility.

34. The *Regulation* defines "facility" to mean:

> "facility" means a location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping, but does not include a marine terminal.

35. The definitions of "facility" and "off-dock trips," along with the inclusion of off-dock trip rates, capture the locations and the geographic areas between which off-dock trips are performed. Off-dock rates apply to licensees not just when they access a Lower Mainland marine terminal, but when they move a container to a "facility" as defined in the *Regulation* and captured in the off-dock rate tables (Appendices II and III) of the Rate Order.

36. As an example, the Additional Impugned Container movement from CP Rail yard in Pitt Meadows directly to Rolls Right terminal in Coquitlam is expressly captured in Appendix II of the current Rate Order as item #17 ("Pitt Meadows") origin and item #19 ("Tri-Cities South") destination and Appendix III sets out the rate between the two as $131.00.

37. Simard's view that a container must be moved to or from a marine terminal in order to attract the off-dock rate would make the inclusion of off-dock rates in the rates first set by the LGIC, and now by the Commissioner, meaningless. By definition, all off-dock trips are between two facilities in the Lower Mainland (excluding marine terminals) and if Simard's interpretation were adopted, no container movement would ever attract an off-dock rate.

38. Both the historical context above and the legislative scheme as a whole make clear that while the *Act* requires companies who perform container trucking services via a marine terminal to be licensed, it also requires licensees to comply with the legislation more broadly, including by paying off-dock rates for containers that move between facilities within the Lower Mainland that do not involve a marine terminal.

39. One of the benefits associated with having a container trucking services licence is access to marine terminals. Non-licensees – presumably the licensees' competitors -- who perform container trucking work in the Lower Mainland do not have such access. Such a restriction elicits many complaints from non-licensees who argue that it is unfair that access to marine terminals is an advantage bestowed on only licensed companies. However, this is how the regime works, for various reasons (including because limiting access to marine terminals relieves congestion and wait times and contributes to the stability of the industry). Paying off-dock regulated rates is one of the "costs" associated with the grant of a license to access a marine terminal.

40. In *Forfar Enterprises Ltd.* (CTC Decision No. 20/2016) Commissioner MacPhail found that the inclusion of off-dock rates in the *Regulation* was consistent with his interpretation of the *Act* as applying to the movement of containers that did not travel directly to or from a marine terminal. There, also, the licensee argued that the movement of containers between railyards and customer locations in the Lower Mainland was not captured by the *Act.* Commissioner MacPhail confirmed that containers moved from rail yards to customers in the Lower Mainland are within the scope of the *Act* because "the legislation makes the payment of the legislated rates a term of the privilege of holding a TLS license. In return for being licensed to perform on-dock container trucking work, the licensed trucking company must comply with the legislation, including required pay rates for all work falling within the scope of the legislation" (para 35). I adopt this analysis.

41. Off-dock rates were included in the *Act* and *Regulation* to address the undercutting of rates experienced by drivers who also performed on-dock work. To ensure stability within the drayage sector – especially at marine terminals – the regulation of off-dock trips secured a minimum income for drivers when they were not performing on-dock work.

42. Identifying whether a licensee is required to pay off-dock rates involves the following analysis:

    a) Is the container a "metal box furnished for the marine transportation of goods or approved by an ocean carrier for the marine transportation of goods"?
    b) Are the locations between which the container is moved in the Lower Mainland and locations "where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping" (other than marine terminals)?

43. Turning to whether the Impugned Containers and the Additional Impugned Containers identified in Investigation Report #1 and #2 (collectively the "Investigation Reports") are containers, Simard argues some of the containers listed in Investigation Report #2 are not "suitable for container ships"; however, it fails to rebut the evidence found in the Investigation Reports regarding each of the Impugned Containers and Additional Impugned Containers, on the basis of which I determined that each were "containers" under the *Regulation*, and is unwilling or unable to articulate how it arrives at its conclusion.

44. In *Forfar Enterprises Ltd*. (CTC Decision No. 20/2016) the then-Commissioner stated that "containers which are identified by a 4 letter identification codes consistent with containers, 'furnished or approved by an ocean carrier for the marine transportation of goods' are to be presumed to be 'containers' as defined in the *Regulation*." He went on to say that "where containers are so identified, the onus lies with the licensee to rebut this presumption." I have adopted that analysis with respect to the containers moved by Simard on March 15, 2023.

45. I previously found that the Impugned Containers were covered under the *Act*; this finding has not been rebutted. I further find the Additional Impugned Containers also fall within the scope of the *Act*. The Additional Impugned Containers are identified with 4 letter identification codes consistent with marine containers. Furthermore, as set out at page 4 of Investigation Report #2 some of those containers have been recorded on shipping tracking websites as having been recently transported on the ocean and similar containers have been photographed on ocean carriers. As also set out at page 5 of Investigation Report #2, containers similar to the Additional Impugned Containers have been affixed with Convention of Safe Containers plate ("CSC Plate") which authorizes the use of the containers for the marine transportation of goods. Based on the above, and Simard's failure to provide evidence to the contrary, I am satisfied that the Additional Impugned Containers are each "a metal box furnished or approved by an ocean carrier for the marine transportation of goods" as per the *Regulation.*

46. Simard does not dispute the material facts of its movement of containers on March 15, 2023. I find that the rail yard and the customer to whom the Impugned Containers and the Additional Impugned Containers were delivered were both "facilities" within the Lower Mainland.

47. As the Impugned and Additional Impugned Containers meet the definition of "container" in the *Regulation*, and the locations between which Simard was moving those containers are "facilities" in the Lower Mainland, I find Simard was performing container trucking services on March 15, 2023.

48. As the Impugned Containers and the Additional Impugned Containers are covered under the legislative scheme, Simard was required to pay the minimum rates set out in the Rate Order. Despite Simard's unparticularized submission that the calculations in Investigation Report #2 are incorrect, I have reviewed the calculations alongside the payroll records provided by Simard and I am satisfied they are an accurate. I find that Mr. Kim is owed $6.29 for work performed on March 15, 2023 and Mr. Brar is owed $732.68 for work performed on March 15, 2023 and is owed an additional $468.28 ($445.98 + $22.30) for improper deductions. Simard is therefore in breach of the minimum rate requirements.

49. Simard does not dispute that Mr. Brar, an independent operator, performed CTS work on March 15, 2023 without a sponsorship agreement and without being on the IO List. Section 6.20 and 6.21 of the 2022 CTS licence require Simard to have sponsorship agreement with each independent operator and the conditions set out in the sponsorship agreement (which forms part of the licence) require Simard to only use independent operators on the IO List. Based on the above, I find that Simard violated section 6. 20 and 6.21 of its 2022 CTS licence.

50. Simard does not dispute that the Simard trucks did not have truck tags; I also find that the Simard was in violation of sections 6.15 and 6.16 of its CTS licence on March 15, 2023.

Order

51. Based on the above and pursuant to s. 9 of the *Act,* I order Simard to pay the following amounts and provide proof of its having done so to the OBCCTC within 30 days of the date of this decision for work performed on March 15, 2023:

    - Mr. S. Kim is to be paid $6.29.
    - Mr. G. Brar is to be paid $1,200.96.

52. I also order Simard to, no later than February 28, 2024:

    a. Review its payroll records from September 1, 2019 to the date of this decision and make the appropriate adjustments to bring itself in compliance with the *Act*. In particular, Simard must ensure that it has paid its drivers off-dock rates for all off-dock work from September 1, 2019 to present
    b. Advise the Commissioner of any adjustments made and provide proof of payment to its drivers of same.

53. As per s. 6.6 of its CTS licence, Simard is not to destroy any payroll records created since September 1, 2019 until it receives written permission from the Commissioner.

Proposed penalty

54. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to $500,000.

55. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and *Regulation*). Licensees must comply with the legislation, as well as the terms and conditions of their licence, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

56. In keeping with the above-described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following as set out in *Smart Choice Transportation Ltd.* (OBCCTC Decision #21/2016):

- The seriousness of the respondent's conduct;
- The harm suffered by drivers as a result of the respondent's conduct;
- The damage done to the integrity of Container Trucking Industry;
- The extent to which the licensee was enriched;
- Factors that mitigate the respondent's conduct;
- The respondent's past conduct;
- The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a CTS licence;
- The need to deter licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

57. Taking the relevant Smart Choice factors into consideration, I find that a penalty is appropriate here based on Simard's non-compliant practices that led to the improper payment of wages to two drivers on March 15, 2023. I note that Simard has been the subject of three previous decisions regarding the underpayment of wages, has repaid its drivers in each, and was issued an administrative fine in one of the decisions in the amount of $2,000.00 and yet the non-compliant activity resulting in underpayment has continued. Clearly the administrative penalty was not sufficient to deter continued underpayment of drivers.

58. The requirement to have tagged trucks to perform CTS work is not new and the OBCCTC has made it clear on several occasions that containers moved from a rail yard in the Lower Mainland are captured under the *Act.* The 2022 CTS licence requires licensees performing container trucking services (on-dock and off-dock) to use only tagged trucks, as have all prior licenses (which Simard has also operated under). On April 17, 2020, the OBCCTC issued a bulletin reminding industry that all trucks performing container trucking services under licence must be tagged. On May 18, 2022, the OBCCTC issued an industry advisory clarifying that containers "furnished" or "approved" for the marine transportation of goods that arrive by rail are within the scope of the *Act.* On October 4, 2022, I issued an industry advisory reminding licensees that "both on and off-dock container trucking services are to be completed by licensed companies using tagged trucks." There is a clear need to demonstrate to the drayage sector there are consequences for engaging in off-dock untagged CTS work, especially as licensees have been advised repeatedly that such activity is in contravention of the *Act*, *Regulation* and CTS license.

59. In previous decisions, I have stated that using untagged trucks to move containers is a serious concern (see *Goodrich Transport Ltd.* CTC Decision No 06/2023 and *Ferndale Transport Ltd.* CTC Decision No 07/2023). This is not only because licensees using untagged trucks may be avoiding payment of the minimum rates. It is also because the GPS systems installed in all tagged trucks helps the OBCCTC understand what is going on in the industry. Simard's use of untagged trucks to perform CTS work on March 15, 2023 also resulted in fourteen (14) containers moves of which the OBCCTC would have otherwise been unaware. By using untagged trucks, the licensee is effectively hiding those movements from the OBCCTC auditors and shielding itself from any investigation of whether the drivers were properly compensated. In addition, identifying trucks through a truck tag system allows the OBCCTC to ensure that the drayage sector has the right balance of trucks and container movements in the Lower Mainland. If licensees were permitted to use untagged trucks to move containers, such actions would upset that balance. Too many drivers chasing too few containers has led to the undercutting of wages and destabilization of the drayage sector in the past.

60. In this case, Simard used untagged trucks to perform CTS work and underpaid the drivers performing that work, thus contributing to the very problems the *Act* was established to solve. Given the seriousness of the offence, the purpose of the fine is also one of general deterrence. In other words, it is meant to send a message to the industry that non-compliance will not be tolerated.

61. While the amount of money owed to the drivers is relatively small, the amount was for one workday.

62. I have concluded that an administrative fine of $12,000.00 is appropriate in this case given Simard's previous contraventions, the multiple infractions arising out of this investigation, and its underpayment of drivers on March 15, 2023.

63. This decision should make clear to all licensees that all container trucking services – including containers that are moved to or from a railyard to a customer in the Lower Mainland – must be performed using tagged trucks and must be paid at the minimum regulated rates. Failure to comply is likely to result in a penalty.

64. Considering all the factors present in this case, and in accordance with s. 34(2) of the *Act,* I hereby give notice as follows:

    I propose to impose an administrative fine against Simard in the amount of $12,000.00;

Conclusion

65. Simard has asked that I suspend the Order made on May 26, 2023. I will not do so for the following reasons.

66. In granting a stay application, the Courts have applied a three-part test which I have adopted here:
    a) has the applicant made out a prima facia case that a serious question is to be tried?
    b) has the applicant demonstrated irreparable harm if the stay is not granted?
    c) Does the balance of convivence favour granting the stay.

67. The issue of when an off-dock container movement obliges a licensee to pay in accordance with the Rate Order has been the focus of the Commissioner's reports, bulletins, industry advisories and decisions (e.g. Forfar) for some time. The issues here are like those raised in those communications and decisions and have been available to licensees such as Simard for some time. The OBCCTC's application of the Act should be well understood, and my Order is consistent with those previous pronouncements.

68. However, even if I accept that Simard has made out that a serious question has arisen in my Order, Simard's submission did not particularize any irreparable harm if the stay were not granted.

69. Finally, given the mandate of the OBCCTC to maintain stability in the drayage sector by ensuring licensees pay the prescribed rates to drivers who perform CTS work and penalize licensees who employ practices that contribute to the undercutting of those rates, I find that permitting Simard – or any other licensee – to continue to underpay drivers while it challenges the Order in court does not swing the balance of convenience in favour of Simard.

70. Should it wish to do so, Simard has 7 days from the receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;

71. If Simard provides a written response in accordance with the above, I will consider its response, and provide notice to Simard of my decision to either:

    i) Refrain from imposing any or all of the penalty; or
    ii) Impose any or all of the proposed penalty.

72. This decision and the included orders will be delivered to the licensee and published on the Commissioner's website (www.obcctc.ca)

Dated at Vancouver, B.C. this 25 day of August 2023

Glen MacInnes
Commissioner

February 20, 2019

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Surrey, BC V4N 3M4

Commissioner's Decision
Canadian National Transportations Ltd. (CTC Decision No. 02/2019)

Introduction

1. Canadian National Transportations Ltd. ("CNTL") is a licence holder within the meaning of the *Container Trucking Act* (the "*Act*"). Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by regulation, and a licensee must comply with those statutorily established rates. In particular, section 23(2) states:

   > A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

2. Under section 31 of the *Act*, the Commissioner may initiate an audit or investigation to ensure compliance with the "*Act*, the regulations and a licence" whether or not a complaint has been received by the Commissioner.

3. In January of 2017, the Commissioner directed an auditor to undertake a random audit of CNTL's records to determine if its independent operators ("I/Os") were being paid the minimum rates required under the *Container Trucking Regulation* (the "*Regulation*"). The auditor was directed to audit the periods April 1-30, 2014 and October 1-31, 2016 (together the "Initial Audit Period").

Initial Audit Period

4. CNTL employed one hundred and three (103) I/Os in April 2014 and one hundred and one (101) I/Os in March 2016. Due to the number of sponsored I/Os at CNTL in each of the months of the Initial Audit Period, records for fifteen drivers in each month of the Initial Audit Period were selected for review.

5. The auditor requested and reviewed relevant records and determined that CNTL utilized a pay structure, established by national collective agreement with Unifor 4000, which is a substantially different structure from the rate structure in the *Regulation*.

6. As such, the auditor engaged with CNTL to determine the type of work performed by I/Os at CNTL (in order to determine if that work attracted a regulated rate) and then reviewed CNTL's payment structure and its submissions regarding its payment structure to determine if CNTL remunerates its drivers in a way which meets or exceeds the rates prescribed in the *Regulation*.

CNTL Trucking Services

7. CNTL performs on and off-dock trucking services comprised of the following movements:

    - **Retail Containers** – 53-foot containers come into the CN Vancouver Intermodal Terminal (17560 104th Ave.) on rail, are off-loaded and delivered locally by truck. These containers are CN owned and each has container numbers that start with CNRU. This represents the majority of CNTL's work.
    - **Import Containers** – Containers that arrive by ship and have not been loaded direct to rail at a terminal are trucked to the CN Vancouver Intermodal Terminal (17560 104th Ave.) and loaded onto rail.
    - **Export Containers (Refrigerated)** – Refrigerated containers that arrive on rail at the CN Vancouver Intermodal Terminal (17560 104th Ave.), are off-loaded and delivered to a port container terminal. These containers are not owned by CN and are intended for the marine transportation of goods.
    - **Empty Marine Containers** – Marine containers that travel on rail to the CN Vancouver Intermodal Terminal (17560 104th Ave.) and are then emptied and delivered by truck to a private container storage yard.
    - **CN Transload Export Containers** – Lumber and pulp arrive on rail at the CN Vancouver Intermodal Terminal (17560 104th Ave.). The lumber and pulp are transferred from the rail cars to marine containers that are then trucked to port terminals.
    - **Empty Chassis** – Any trips that involve the movement of an empty chassis. These moves are recorded by CNTL as "CNRZ" on the Statement of Account (Move Details) Reports.
    - **Bob-Tail** – Any trips that involve the movement of a truck with no chassis attached.

CNTL Trucking Rates

8. Under the CNTL/Unifor 4000 collective agreement, CNTL pays its I/Os on a per trip basis using its own, zone-based, trip rate table. I/Os are paid for each trip performed. A trip includes the movement of containers as well as bob-tail and empty chassis moves.

9. In addition, CNTL pays its I/Os an average fuel subsidy of 21% and makes wait time payments to its I/Os for each trip. These payments equate to one hour and fifteen minutes of wait time payment when a driver is at a port terminal and one hour and fifteen minutes of wait time payment when a driver is at the CN Vancouver Intermodal Terminal.

CNTL's Initial Submission Regarding its Remuneration Structure

10. It is CNTL's position that when wait time payments, fuel subsidies and empty chassis/bob tail move payments are added to its trip rates, the total amount often exceeds the regulated rates. CNTL also takes the position that when its payment structure is compared with the regulated rates in this manner, its drivers are often paid more than the regulated rates and therefore a comparison should be made which offsets average per trip underpayments with per trip overpayments.

11. CNTL also argues that when comparing its remuneration structure with the regulated rates, trips to and from the CN Vancouver Intermodal Terminal, at 17560 104th Ave., should price in the regulated "Surrey North" zone and not in the regulated "Port Kells" zone as per the Commissioner's July 4, 2016 Bulletin which places the CN Vancouver Intermodal Terminal in the "Port Kells" zone.

OBCCTC Audit Calculation Procedure

12. The OBCCTC auditor discussed the type of work performed by I/Os at CNTL and raised CNTL's submissions on this with the OBCCTC prior to conducting calculations for the Initial Audit Period.

13. After consideration of CNTL's submissions on the types of work performed, the OBCCTC directed the auditor to conduct the initial audit calculations in the following manner:

    - The movement of retail containers was not to be considered container trucking services for the purpose of the audit as it represents the movement of containers which are not furnished or approved by an ocean carrier for the marine transportation of goods;
    - The movement of empty overseas containers was not considered to be container trucking services for the purpose of the audit because it was determined that these moves were associated with a movement of a container by rail and therefore were not off-dock moves directly related to regulated on-dock moves;
    - Import container movements and export refrigerated container movements were considered container trucking services for the purpose of the audit as they are on-dock movements;
    - Empty chassis and bob-tail trip payments were added to CNTL's trip rate payment when they could be associated with a container trucking services move;
    - CNTL wait time payments were also calculated as part of CNTL's trip rate as CNTL pays its drivers after 15 minutes at all locations, as opposed to the wait time payments made by port terminals to licensees which only pay drivers wait time at port terminals after 90 minutes and do not provide any wait time payment for the CN Terminal;
    - CNTL's average fuel subsidy was also added to CNTL's trip rate. The fuel surcharge payment requirement was included in CNTL's base rate calculation because the fuel surcharge that CNTL pays is higher than the regulated fuel surcharge and was being applied by CNTL to a base rate which is substantially different from the regulated trip rate;
    - After the bob-tail/empty chassis payments, wait time payments and fuel payments were added to CNTL's trip rate, this amount was then compared to the combined, regulated fuel surcharge and trip rate to determine instances of underpayment or overpayment;

- For the purpose of comparing trip rates, the CN Vancouver Intermodal Terminal facility at 17560 104th Ave was determined to be located in the regulated "Port Kells" zone; and
- Underpayments were not offset with overpayments when conducting the calculations.

14. The reasons for the Commissioner's decision to uphold the July 4, 2016 Bulletin regarding the location of the CN Vancouver Intermodal Terminal were outlined in a letter to CNTL which is repeated, in part, below:

> The July 4, 2016 Bulletin was issued in response to questions which were raised about the correct rate to be quoted for trucking services provided to and from the CNTL facility. In response to these queries, the former Commissioner examined the rate table/zone descriptions in order to determine whether the CNTL facility was located in the South Surrey or the Port Kells zone under the *Regulation*. The North Surrey zone, as detailed in the *Regulation*, is substantially farther away from the CNTL facility than either the South Surrey or Port Kells zones and therefore not a logical zone in which to designate the CNTL facility.
>
> Before making a decision to designate the facility in the Port Kells zone, the Commissioner considered other factors including:
>
> - Historic audits undertaken by previous auditing programs that utilized Port Kells as the CNTL facility zone;
> - Historical treatment of the CNTL facility as being in the Port Kells zone (including in the Joint Action Plan 2014); and
> - The on-dock trip rates under the *Regulation* which reflect the distance and time to drive between the CNTL facility and container terminals. It was determined that applying a North or South Surrey trip rate would result in an unreasonable decrease in the rate which would not reflect the cost in time and distance travelled to provide container trucking services between CNTL's facility and major container terminals.
>
> For these reasons a determination that the CNTL facility should be designated as being in the Port Kells zone was made and I am not inclined to revisit that decision.
>
> Further, I note that each licensed company that provides container trucking services to and from CNTL's facility has had those moves audited on the basis that the moves originated or concluded in the Port Kells zone. This has included all moves which occurred between April 3, 2014 and present. I do not intend to treat CNTL differently.

Initial Audit Period Findings

15. The auditor determined that during the Initial Audit Period, CNTL paid, in some instances, rates which were equal to or greater than the regulated trip rates and in other instances did not pay rates equal to or greater than the regulated trip rates. As the auditor did not use overpayments to offset underpayments, the auditor concluded that CNTL did not always pay its I/Os the regulated trip rates during the Initial Audit Period.

16. Having concluded that CNTL did not always pay its I/Os the regulated trip rates during the Initial Audit Period, the auditor expanded the scope of the audit to cover the period from April 3, 2014 to June 2, 2018 (the "Expanded Audit Period").

17. The auditor directed CNTL to review its records during the Expanded Audit Period and calculate the amounts owing to all of its drivers based on the auditor's calculation method used in the Initial Audit Period audit.

CNTL's Further Submission Regarding its Remuneration Structure

18. CNTL provided calculations to the auditor for review. The auditor reviewed CNTL's calculations and determined that CNTL utilized the Port Kells zone rate when conducting its calculations as per the Commissioner's directions but did not perform its calculations in a manner which was generally consistent with the auditor's methodology.

19. During the Initial Audit Period audit, each container trip undertaken by a CNTL driver was reviewed by the OBCCTC auditor to determine if bob-tail or empty chassis trips were performed before or after the trip in question. If a bob-tail or empty chassis trip did take place, the auditor then added CNTL's bob-tail or empty chassis trip rate to its container trip rate (which also includes a wait time payment and fuel surcharge payment) and then compared that total to the regulated rate plus the regulated fuel surcharge percentage.

20. In its calculations provided to the auditor, CNTL elected to combine each payment made to a driver (this includes the trip rates, bob-tail and empty chassis rates and wait time payments). CNTL then added each payment to reach a total payment for the year, and then added an additional 21% fuel surcharge payment. This total amount was compared to what a driver should have been paid under the *Regulation* (the sum of the regulated rate payment for a trip performed plus the regulated 2% fuel surcharge).

21. Based on this approach, CNTL calculated that it overpaid its drivers in each year reviewed, for a total overpayment of $2,273,183.88 during the Expanded Audit Period. CNTL reached this conclusion because there is no specific regulated rate for bob-tail and empty chassis moves but CNTL had been paying for those moves where they occurred. As a result, CNTL calculated that it overpaid in each instance where it paid for bob-tail and empty chassis moves. These overpayments were then offset by CNTL against the instances where a base trip rate plus wait time payment was made that did not meet or exceed the regulated trip rate.

Decision

22. As described above, the circumstances of this audit are that:

    a. The Commissioner ordered an audit of CNTL's I/Os;
    b. CNTL utilizes a pay structure that is substantially different in structure from the rate structure in the *Regulation*;
    c. CNTL's pay structure was reviewed to determine if CNTL remunerates its drivers in a way which meets or exceeds the rates prescribed in the *Regulation*;
    d. The auditor reviewed CNTL's records and determined that CNTL did not always pay its I/Os the regulated trip rates during the Initial Audit Period; and
    e. CNTL conducted its calculations in accordance with OBCCTC direction regarding the Port Kells zone.

23. CNTL is a licence holder, and a licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 of the *Act* for those container trucking services. Therefore, each licence holder's payment structure is measured against the *Regulation* to ensure compliance through audits which apply a "meet or exceeds" test. To rule that CNTL's compensation meets or exceeds the regulated rates, I must agree with CNTL's calculations and allow CNTL to offset underpayments with overpayments.

24. In this case, the audit method dictates whether overpayments or underpayments occurred. When each of CNTL's payments (wait time, fuel and bob-tail/empty chassis) are combined and then compared to the regulated trip rate, there are instances of overpayment and underpayment. CNTL's position is that, if this approach is to be followed, instances of underpayment should be offset by bob-tail and empty chassis payments that should be considered overpayments because the *Regulation* does not require a bob-tail and empty chassis payment. Fundamental to CNTL's argument is the principle that its compensation meets or exceeds the regulated rates because CNTL, under its collective agreement, makes extra payments that are not required under the *Regulation*.

25. Generally speaking, licence holders have not been permitted to off-set underpayments with overpayments where the underpayments and overpayments were each clearly identifiable and comparable to the regulated rates.[1] In this case, the vastly different nature of CNTL's rate structure as compared to the regulated rate structure makes direct comparisions to the regulated rates difficult.

26. As set out above, CNTL compensates its drivers under a different model. It compensates for wait-time and the regulated fuel surcharge differently. I also note that there is no specific bob-tail and empty chassis rate in the *Regulation*, and while it is commonly accepted within the industry that the regulated trip rates are blended to include a price for bob-tail and empty chassis moves, the exact percentage of the regulated trip rate which accounts for bob-tail and empty chassis moves is not clear. Given the difficulty in comparing the regulated blended rates with CNTL's unblended rates, and in recognition that there is no clearly articulated bob-tail and empty chassis rate in the *Regulation*, I am inclinded to accept that CNTL's compensation meets or exceeds the regulated rates

[1] See Lower Mainland Fast Freight Inc. (CTC Decision No. 07/2018) – Decision Notice

and fuel surcharge. This finding is also consistent with the remedial purpose of the legislative scheme, which I describe below.

27. One of the underlying purposes of the *Act and Regulation* is to stabilize the drayage industry in British Columbia. More specifically, the legislative goals are to prevent trucking companies from underpaying drivers. Undercutting of drivers' rates of pay, along with other reprehensible and wide-spread activity by trucking companies (the historical mistreatment of drivers, including but not limited to harassment, threats and intimidation, and forced under-the-table re-payment of driver remuneration back to trucking companies), is what led to unrest in the industry and then ultimately to driver initiated work stoppages at the ports, which crippled the drayage industry multiple times in British Columbia. This situation gave rise to the current legislative and licencing scheme, which has resulted in no work stoppages since its inception in 2014.

28. CNTL operates under a national rather than provincial collective agreement which was in place when the *Act* and *Regulation* were introduced. CNTL and its drivers were not involved in the work stoppages that led to the introduction of the legislative scheme, and have never indicated that the historical issues which gave rise to any work stoppages were a factor for them. To date, CNTL truckers have never made complaints to the OBCCTC regarding their remuneration, and Unifor 4000 has, on behalf of its members, indicated its satisfaction with the current compensation under the CNTL collective agreement.

29. On the basis of the facts noted above, I accept CNTL's method of calculation in this instance and find that CNTL's overall compensation meets or exceeds the regulated rates. However, I must caution that this decision should only be viewed within the context of this audit and the unique factors and circumstances which were considered in reaching this decision. CNTL drivers are remunerated under a national collective agreement which is the only one of its kind amongst licence holders. Further, I find that the remedial goals and substance of the legislation are globally fulfilled on the unique facts in this case.

30. I re-iterate that this is a unique case. The container trucking industry should not necessarily use these findings as a model or basis for any future collective agreement negotiations or pay structures, as my conclusions here are confined to the reasons noted above and to the specific facts in this case.

31. This decision will be delivered to Canadian National Transportations Ltd. and published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 20th day February 2019.

Michael Crawford, Commissioner

OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

December 1, 2016

Forfar Enterprises Ltd.
17471 29 Avenue
Surrey, B.C. V3Z 0E7

Via email: goforfar@gmail.com
Original via mail

Commissioner's Decision
Forfar Enterprises Ltd. (CTC Decision No. 20/2016)

Introduction

1. Forfar Enterprises Ltd. ("Forfar") is a licensee within the meaning of the *Container Trucking Act* (the "*Act*"). Under Sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by regulation, and a licensee must comply with those statutorily established rates. In particular, Section 23(2) states:

> A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

2. Under Section 31 of the *Act,* the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence..." whether or not a complaint has been received by the Commissioner.

Facts

3. In February of 2016, the then Acting Commissioner directed that an audit of Forfar be undertaken. The purpose of the audit was to determine if Forfar was paying its directly employed operators ("company drivers") the minimum rates required under the *Container Trucking Regulation* (the *Regulation*). The audit review periods identified in the Acting Commissioner's direction were April 1-30, 2015 and October 1-31, 2015.

4. The auditor requested, and received, trip sheets, payroll records and other documentation from Forfar identifying container moves, hours worked and wages paid.

5. The audit disclosed that Forfar company drivers perform both Container Trucking Services work ("CTS work") and work which is not Container Trucking Services work ("Non CTS work").

6. It further revealed that in April of 2015 Forfar paid its drivers $22 per hour for all work performed (both CTS and Non-CTS work.) In addition, Forfar provided paid group health benefits valued at $308.36. per month and paid bonuses and a phone allowance.

7. In August of 2015 Forfar increased its pay rate to $26.00 per hour for all work performed and ceased paying the group health benefit premiums. At this point, drivers who wished to maintain the group health coverage had the cost of the benefits deducted from their pay.

8. Forfar has not paid any retroactive pay adjustments to its drivers.

9. The auditor made several attempts to calculate amounts owing for the audit periods based on information that Forfar provided during the course of the audit. Ultimately she concluded the company owes its six company drivers a total of $707.74 for the two audit periods.

10. The auditor then asked the company to perform a self-audit for compliance for the periods not covered by the audit (that is, April 3, 2014 to March 31, 2015, May 1 to September 30, 2015, and November 1, 2015 to present). Forfar refused to perform this task because it disagreed with the auditor's method of calculating compliance and believed it was in compliance.

11. During the audit process, Forfar raised a number of issues with the auditor's calculations which will be addressed in the next part of my decision.

12. In addition, following receipt of the auditor's report, Forfar was invited to provide the Commissioner with a written submission explaining its position on issues raised during the audit. On October 14, 2016 Forfar filed a written submission with the Office of the British Columbia Container Trucking Commissioner. Forfar's submission has been carefully considered in my deliberations.

Issues Arising

13. Forfar's submission raises the following issues.

    a. Rail yard and other off-dock moves

14. Forfar submits that a company which only transports containers between off-dock locations, such as CN and CP rail yards and a customer's location in the Lower Mainland, does not require a TLS licence and is not subject to CTC regulation. Therefore, Forfar says, it is unreasonable that, when it performs such off-dock moves, it is subject to CTC rates and regulation. Forfar further submits on this issue: "Also not considered, many rail container moves are of rail owned, marine non-approved containers".

15. For the reasons which follow I am not persuaded that the movements of marine-approved containers by company drivers of TLS licensee companies such as Forfar between off-dock locations such as the rail yards and customer locations in the Lower Mainland are excluded from the scope of CTC legislation.

16. Section 13 of the *Regulation* requires that a licencee pay directly employed operators (company drivers) the minimum hourly rates set out in that provision for the performance of container trucking services.

17. The *Act* defines "container trucking services":

> **"container trucking services"** means the transportation of a container by means of a truck."

18. The definition of a container is found it Section 1(1) the *Regulation:*

> **"container"** means a metal box furnished or approved by an ocean carrier for the marine transportation of goods."

Forfar argues that the containers moved by Forfar to and from CN, CP and Delco are not furnished or approved by marine carriers and accordingly are not "containers" as that term is defined in the *Regulation*.

19. However, when asked by the auditor to identify which containers it was referring to, Forfar was unable or unwilling to identify the specific containers at issue.

20. To come to a decision on whether or not the containers at issue were "a metal box furnished or approved by an ocean carrier for the marine transportation of goods", the auditor examined the driver trip sheets. The trip sheets identified each container moved by company drivers by reference to a sequence of 4 letters printed on the side of each container. The auditor reports that in each case the referenced sequence of letters was consistent with those normally stamped on containers "..... furnished or approved by an ocean carrier for the marine transportation of goods".

21. In the result, the auditor presumed that these containers were marine "containers" as defined in the *Regulation.* The auditor then provided Forfar with an opportunity to rebut her presumption. As noted above, Forfar was unable or unwilling to identify the specific containers at issue and the presumption went unrebutted.

22. Absent a response from Forfar, the auditor concluded that the containers met the definition of "container" for the purposes of the *Act* and *Regulation* and that the movement of these containers attracted the rates set out in Section 13 of the *Regulation.*

23. I agree with the approach taken by the auditor. Containers which are identified by a 4 letter identification codes consistent with containers, "furnished or approved by an ocean carrier for the marine transportation of goods" are to be presumed to be "containers" as defined in the *Regulation.* Where containers are so identified, the onus lies with the licensee to rebut this presumption.

24. In this case, Forfar was unwilling or unable to rebut the presumption. Thus the auditor correctly concluded that the containers fell within the definition of "container" found in the *Regulation* and accordingly the movement of these containers attracts the rates proscribed by the *Act* and *Regulation.* It follows that I also agree with, and accept, the auditor's conclusions on this part of the audit.

25. Forfar further argues that, because it is not moving containers to or from marine terminals, it is not required to pay the rates proscribed by the *Act* and *Regulation* for trips to or from CN, CP and Delco.

26. However, Forfar is a licensee engaged in container trucking services and as such is subject to the requirements of the *Act* and *Regulation*.

27. Under Section 8 of the *Interpretation Act* R.S.B.C. 1996 c.238, every enactment must be construed

as being remedial, and must be given a fair, large and liberal construction and interpretation as best ensures the attainment of its objectives".

28. An important objective of the *Act* and *Regulation* is to ensure that both company drivers and independent operators engaged in container trucking services are paid a fair wage in a timely way. In Machtinger v. HOJ Industries [1992] 1 S.C.R. 986, Iacobucci J., speaking for the majority, made it clear that where the objective of an *Act* is to benefit employees (in this case company drivers) then,

> ".... an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not."

29. I find the rate protections set out in Section 13 of the *Regulation* apply to all container trucking services performed by company drivers employed by licensees including off-dock trips. Off dock trips are not excluded from the scope of that provision, either expressly or, in my view, inferentially.

30. Off-dock trips are defined in the *Regulation* to mean:

> ***"off-dock trip"*** *means one movement of one or more containers by a trucker from one facility in the Lower Mainland to a different facility in the Lower Mainland, but does not include*
> *(a) an on-dock trip, or*
> *(b) a movement of a container from one location in a facility to a different location in the same facility;*

31. My interpretation is consistent with the Section 12(3) of the *Regulation* which requires, that where a licensee pays an independent operator on a per trip basis for an off-dock trip, the licensee must pay the independent operator no less than the minimum regulated trip rates set out Table 2 of Schedule 1 of the Regulation.

32. Regulated rates for independent operators expressly include both on dock and off dock moves, as defined in the legislation. Off-dock trips include the movement of marine containers between rail yards and customer locations.

33. In my view it would be absurd to interpret the legislation as requiring that licensees pay independent operators paid on a per the trip basis the required minimum trip rates for off-dock trips, but exclude company drivers paid by the hour from the minimum rate requirements contained in the *Regulation* for doing exactly the same work.

34. Such an interpretation would be directly at odds with the purpose and objective of the legislation, which includes providing for stability in the remuneration of drivers who provide container trucking services, by establishing standardized minimum rates for all who provide such services. I find such an interpretation would be contrary to my obligation to give a "... fair, large and liberal construction and interpretation as best ensures the attainment of its objectives".

35. Finally, with respect to the argument that it is unfair or unreasonable that trucking companies which do not hold TLS licenses can provide trucking services in the Lower Mainland without being subject

to the regulation while TLS licensees are subject to the legislation, the short answer is that the legislation makes the payment of the legislated rates a term of the privilege of holding a TLS license. In return for being licensed to perform on-dock container trucking work, the licensed trucking company must comply with the legislation, including required pay rates for all work falling with the scope of the legislation.

36. In the result, I find that the minimum rates established by Section 13 of the *Regulation* apply to licensee employed company drivers performing container trucking services, whether those services are in relation to on-dock or off-dock trips, including the movement of containers by company drivers from CN, CP and Delco to a different facility in the Lower Mainland.

b. *Attribution of medical month benefit cost paid by Forfar prior to August of 2015*

37. Forfar position is outlined in its October 14, 2016 submission:

> *"Extended benefits are currently[1] provided to all drivers and paid in full by Forfar. Before the mandated wage increases, we intended to end paid benefits and shift the onus to the employee. Trucking rates continued to deteriorate and we needed to alleviate some cost. The only reason we decided to keep paid benefits was the mandate. We were not ready to increase the per hour wage so instead decided to keep paid benefits and offer bonuses on paychecks if we felt there was a shortfall. Due to these circumstances, benefit dollars should be applied only to TLS hours. As we were no longer willing to offer this benefit to employees, it must be deemed as a port benefit. Therefore, all medical benefit dollars must be applied to TLS hours."*

38. The auditor attributed the monthly benefit cost to all hours worked, and applied the benefit cost proportionally.

39. I do not accept the argument advanced by Forfar on this point.

40. Where benefits provided to company drivers are paid for on a global monthly basis it is reasonable to presume, absent clear proof to the contrary, that such benefit packages are intended to be an integral part the drivers overall compensation package and are intended to compensate drivers for all work performed, not just some isolated portion of that work. Not only is this a reasonable conclusion to reach, it is one which best ensures that drivers are paid a fair wage and is one which best advances the objectives and purposes of the *Act.*

41. I find that the auditor correctly applied the benefit premiums to all work performed by company drivers and not to just the CTS work as argued by Forfar. Not only is this interpretation consistent with the facts which present themselves here, it is consistent with a fair, liberal and purposeful interpretation of the legislation.

c. *Is the phone allowance provided by Forfar to its company drivers a "benefit" for the purpose of the Act and Regulation?*

[1] I note that in the auditor's report she determined that the payment of the medical benefit was discontinued in August of 2015.

42. Section 13 of the *Regulation* establishes the minimum rates which must be paid to company drivers. The required rate is inclusive of "benefits".

43. Section 1.1 of the *Regulation* defines benefit;

> ***"benefit"*** *includes*
>
> *(a) medical, disability, extended health, life, accidental death and dismemberment, dental or orthodontic insurance, and*
>
> *(b) contributions to a pension plan or retirement fund,*
>
> *but does not include*
>
> *(c) wages or other remuneration calculated on the basis of work done or productivity, or*
>
> *(d) the licensee's or employer's costs of doing business;*

44. Forfar argues that the phone allowance is a benefit as defined in the *Regulation* and should therefore be included in the rate required by Section 13.

45. I do not accept Forfar's position.

46. The OBCCTC has consistently taken the view, that telephone allowances are not a benefit for the purposes of Section 13 of the *Regulation.* The definition of "benefit" found in the *Regulation* includes a list of very specific types of benefits such as medical, disability extended health, life, accidental death and dismemberment, dental or orthodontic insurance, and pension plan or retirement fund contributions. A phone allowance is very different than the types of benefits listed. Drivers use their cell phones in their daily work. The allowance compensates drivers for using their personal phones for work related purposes. Thus the telephone allowances are properly characterized as a business cost. The definition of "benefits" expressly excludes "the licensee's or employer's costs of doing business." I conclude the telephone allowance is not a "benefit" for purposes of the legislation.

Auditors Conclusions

47. The auditor concludes the audit report with a finding that Forfar is out of compliance with the minimum rates of remuneration as required by the *Regulation* for some drivers in some pay periods in April and October 2015 (the periods covered in the audit). The auditor further reports that an adjustment of $707.64 is owing to three of six company drivers for the periods under audit.

48. I accept the auditors conclusions which I find are consistent with my findings on the issues addressed above.

49. Finally, the auditor reports that Forfar has refused to pay the adjustments calculated to be owing and has thus far refused to conduct a self- audit or take any steps necessary to bring itself into compliance with the Act.

Decision

50. As described above, the circumstances of this case are that:

    a) In February of 2016 the OBCCTC initiated an audit of Forfar covering the months of April and October, 2015.

    b) Forfar raised a number of of issues during the audit process and was given an opportunity to provide full written submissions addressing them.

    c) Forfar's issues are addressed in this decision, and in all cases the auditor's approach has been found to be consistent with the proper interpretation and application of the *Act* and *Regulation.*

    d) Forfar is out of compliance for the months under audit and undercompensated 3 of its company drivers by amounts totaling $707.64 during these audited periods.

    e) Forfar has not paid the adjustments found to be owing.

    f) Forfar has not taken any steps to correct its non-compliance and continues its non-compliant behaviors.

51. As set out above, Forfar has not paid the amounts determined by the auditor to be owing under the legislation or corrected its non-compliant payment practices. In these circumstances, I hereby issue the following orders pursuant to Section 9 of the *Act*:

    I hereby order Forfar to:

    a) immediately take all necessary steps to bring itself into compliance with the requirements of the *Act* and *Regulation* as interpreted in this decision. More specifically, Forfar must do the following:

        i. undertake an internal audit of its payments to its drivers, applying the principles set forth in this decision, for the purpose of identifying and calculating unpaid amounts owing under the legislation to its company drivers for the period from April 3rd, 2014 to the date of this decision;

        ii. provide to the auditor a spreadsheet of its calculations of adjustment amounts owing to its drivers further to this internal audit, and pay the amounts the auditor advises are owing on or before January 6, 2017.

        iii. make any changes necessary to its payroll and administrative practices to ensure that it will be in compliance with the legislation from the date of this decision

b) immediately pay the $707.64 adjustment amount found to be owing by the auditor for the months of April and October, 2015.

c) meet with an auditor by no later than January 6th, 2017 and demonstrate to the auditor's satisfaction that it has taken all necessary steps to bring itself into compliance with the legislation and that it has properly calculated and paid all adjustment amounts owing to its company drivers arisng from or relating to its past non-compliant practices.

52. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under Section 28 of the Regulation, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to $500,000.

53. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and Regulation). Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

54. In this case I have concluded that Forfar has engaged in a number of non-compliant practices which have resulted in a failure to pay its company drivers the full amount of compensation owing under the *Act* and *Regulation.* I have also provided directions identifying how and where Forfar has failed to comply with its obligations under the *Act* and *Regulation* and have ordered Forfar to correct its non-compliant practices and calculate the adjustments owing to its company drivers resulting from same and to pay those adjustments.

55. In addition I have ordered Forfar to report to an OBCCTC auditor by January 6th, 2017 for the purpose of demonstrating that it has taken all necessary steps to become compliant and that it has correctly calculated an paid the outstanding adjustment amounts owing to its drivers.

56. In these circumstances, it is premature to determine what if any administrative penalty is appropriate in this case. For this reason I reserve judgment on penalty until after the auditor has met with Forfar and the auditor has reported back to me on:
    a) The steps taken by Forfar to
        i. bring itself into compliance,
        ii. identify and calculate the monies owing to its drivers
    b) The adjustment amounts owing by Forfar to its drivers for the period from April 3, 2014 to date;
    c) Whether Forfar has paid the outstanding adjustment amounts owing;
    d) Whether Forfar is now in substantial compliance with the legislation.

Conclusion

57. With the publication of this decision, I have addressed a number of important issues and ruled as follows:

    a) Containers which have a 4-letter code identifying them as containers furnished or approved by ocean carriers for the marine transportation of goods will be presumed to be containers for the purpose of the *Act* and *Regulation.* The onus rests with the licensee to rebut the presumption.

    b) Licensees are required to pay company drivers the minimum hourly rates set out in Section 13 of the *Regulation* for all container trucking services performed by the driver.

    c) Where a licensee pays monthly global medical benefit premiums on behalf of its company drivers, the presumption is that payment of these premiums applies to all work performed by the drivers, not just CTS driving work. The onus rests with the licensee to rebut the presumption.

    d) Telephone allowances are not a benefit under the *Regulation.*

58. Having ruled on these issues, I ordered Forfar to correct its non-compliant practices and to take all necessary steps to identify and calculate the monies owing to its drivers as a result of its failure to comply with the *Act* and *Regulation*; to pay its drivers the monies found to be owing; and to report to the auditor with regards to these matters by no later than January 6th, 2017 Upon receiving the auditor's report, I will make a decision on whether an administrative penalty is appropriate in the circumstances and if so, I will give notice of the amount of the proposed penalty.

This decision will be delivered to Forfar and published on the Commissioner's website. (www.bc-ctc.ca).

Dated at Vancouver, B.C., this 1st day of December, 2016.

Duncan MacPhail, Commissioner

On section 16.

C. Trevena: We keep saying we're getting to the meat of this, but I think we're getting to the meat of this now. I'd like to ask the minister…. I'll ask two questions to start with.

In 16(1): "A person must not carry out prescribed container trucking services in a prescribed area…." I have two questions of this. What is the prescribed area? And then, when the minister has explained that, in section 44 it actually says that the Lieutenant-Governor-in-Council prescribes the area under section 16(1). This is a prescribed area set by cabinet. So why is this being left to the Lieutenant-Governor-in-Council, and what is the prescribed area?

Hon. T. Stone: The prescribed area, insofar as section 16(1) indicates here, is intended to reflect the Lower Mainland. I should point out again that at the highest level here we're talking about ensuring that the commissioner's office and the licence requirements and so forth capture all of the off-dock activity that is in direct association with the port.

Vince Ready and Corinn Bell actually, in their report of recommendations, which is a public document, very specifically detailed what they believed the prescribed area needs to be. We will ensure that the regulation adopts that specific description from the Ready-Bell recommendations.

C. Trevena: So this prescribed area that the minister talked about is the whole Lower Mainland. If a truck comes off Deltaport, picks up a container, moves it to an off-dock facility, is then moved on and comes back to the dock, that is still going to be a prescribed area?

Hon. T. Stone: Yes, the member is correct.

[1710]

C. Trevena: This is the prescribed area that is, then, in the Ready-Bell report. It's not set by the port? It's all on the Ready-Bell recommendations? I'm sort of looking through to find it just to cross-compare.

Hon. T. Stone: Yes, and I'll actually read right into the record here the prescribed area as per schedule 2 of the Ready-Bell report. It includes: Abbotsford-Clearbrook, Annacis Island, Burnaby North, Burnaby South, Chilliwack-Sardis, Cloverdale, Coquitlam, Delta North–Tilbury, Fort Langley–Aldergrove, Haney–Maple Ridge, Langley City, Langley South, Mission, New Westminster, North Vancouver, Pacific Highway — in the city of Surrey — Pitt Meadows, Port Kells — also in Surrey — Port Moody–Port Coquitlam, Richmond North, Richmond South, Surrey North, Surrey South, Vancouver and West Vancouver.

C. Trevena: I thank the minister. Just for a point of clarification and to make sure that I'm understanding completely, there will be prescribed rates even if a container is left somewhere and then picked up and moved back to the port. If it's delivered, comes back and then goes back to the port, they will still get the prescribed rate, even though you've got sort of the off-dock as well as the on-dock. That nodding is a yes; I'm getting this right?

Hon. T. Stone: Yes, you are getting this right.

C. Trevena: I just want to go back for a moment. Sorry to jump here but still on section 22. I just missed a question on 22(d) in my anticipation of getting on to costs of fuel and the import of that.

Section (d). I wonder if the minister could provide a bit more detail. You've got: "for the purposes of paragraph (b) (i), specify which container trucking services or which parts of the container trucking services constitute a trip to which a rate established under paragraph (b) is to apply."

I wonder if the minister could give some examples, some detail of what this paragraph means in relation to the trips that are going to be taken and the geographical issues we've been talking about.

Hon. T. Stone: This section, section (d), is here to, again, ensure that as the regulation is developed on rates, through the regulation we are as specific as we possibly can be as to what actually constitutes a move. As the member knows well, there are all kinds of moves — you know, truck moves in Metro Vancouver — that have nothing whatsoever to do with the drayage sector. The moves never touch the port in any fashion. This section will ensure that there's maximum clarity on what actually constitutes a move within the drayage sector.

C. Trevena: When I had my briefing — and I do thank the minister's office for providing a briefing on the bill — what we kept coming back to is the agreement that it is very complex.

I was wondering: how is this different from everything else we've been talking about? We're talking about….

I'd have thought that one of the key issues was the on- and off-dock — to make sure that you get the guarantee that if a truck comes from one place and goes to another which is off dock, empties, comes back and comes back on dock, it's still going to get paid as one trip. I'm now getting a bit confused about what the difference is here from what we were talking about earlier on the on- and off-dock issue.

[1130]

Hon. T. Stone: This section is here to provide, through the Lieutenant-Governor-in-Council, the very specific details, the clarity, around what actually constitutes a drayage sector move.

Through this entire section 22 we're dealing with…. The regulation will be developed that will have the very specific schedule of all of the pickup and drop-off locations, which I've read into *Hansard,* and the hourly and trip rates that will be applicable. It will deal with the geographic area, potentially dates and times, and so forth.

We're building the flexibility here to also potentially have the regulation speak to the specificity of the types of moves. There are a tremendous number of container moves in the Lower Mainland which have nothing whatsoever to do with the drayage sector. We want to make absolutely certain that these regulations do not capture any non-port-related or non-drayage-related moves.

C. Trevena: Since these are all going to be in the schedule agreed through regulation, were all of these discussed and agreed upon under the joint action plan, or are they ones that are going to be evolved through the industry advisory council?

Hon. T. Stone: All of the details that will inform the rate regulation, as we've talked about it today and yesterday, have their genesis in the joint action plan from earlier this spring. As the member knows, there was a steering committee that met on a weekly basis through most of the spring, summer and into the fall, and a lot of good work done on the rates, a lot of good input received.

Vince Ready and Corinn Bell were engaged by the federal government through a good amount of that period to engage with the entire drayage sector, including a tremendous amount of hours with truckers. As the member knows, the Ready-Bell report deals in a great deal of specifics on this rate piece.

All of the above has come into play in terms of shaping the legislation that we're working on here today, and all of the above will help inform the regulations that will follow respecting the rates.

C. Trevena: Will the industry advisory council also inform the regulation? I mean, is it evolving? When we've finished this bill later this week, beginning of next week and we get working on the regulation, is that being