

# Port Transportation Association



Mr. Glen MacInnes  
Office of the British Columbia Container Trucking Commissioner  
1085 Cambie Street  
Vancouver, BC V6B 5L7

VIA EMAIL: [registrar@obcctc.ca](mailto:registrar@obcctc.ca)

February 26, 2024

## **RE: PTA Submission to the OBCCTC 2024 CTS Licence Reform Proposed Changes - January 2024**

Dear Mr. MacInnes,

The Port Transportation Association (PTA) would like to preface our submission with the request that all stakeholders be welcome to submit additional responses or have a second Licence Reform Submission period at such time when the pending legal proceeding of Simard Westlink Inc. V. OBCCTC has concluded, as we feel that the outcome may ultimately shape new definitions for what is considered a container, and what is an off-dock move, under the OBCCTC jurisdiction.

We would like to be clear that the OBCCTC has not even remotely demonstrated why the upcoming licence would require such sweeping and impactful changes.

The PTA understands that the OBCCTC intends the 2024 Licence as a upheaval from all previous Licences as opposed to a renewal, however after extensive review of the proposed changes, there is concern that there is significant risk to both licensees and the industry as a whole if changes proceed as drafted with inevitable court challenges proceeding.

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Responding section by section, the PTA will note items of concern that we feel are not adequately explained, and/or will induce unintended consequences to the industry as a whole, followed by key concerns and questions surrounding the overall changes proposed in the 2024 CTS Licence Reform as it reads at this time.

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## CTS Licence Section 1: Definitions:

While the PTA believes that the OBCCTC has stricken specific definitions from the Proposed 2024 Licence as a matter of housekeeping, the PTA would like it to be confirmed that it is solely due to redundancy in that key industry definitions such as “**Container**” and “**Marine Terminal**”, which are already clearly defined in the Container Trucking Act and Regulations, have been removed from the Licence.

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## CTS Licence Section 4: Fees

**Section 4.1** remains the same, however it appears that the 2024 Proposed Licence encompasses broad changes that would appear to expand the OBCCTC roles and responsibilities. The PTA would like to note member concern that there will be increased fees and costs associated with the 2024 Licence that will not be made clear to Licensees until the third section of reform “Tag Management” near the end of the consultation process.

We would like to remind the current Commissioner that its office’s role was to eventually be maintained on a part-time basis fixated on driver pay **only**. What the OBCCTC is purposing is the exact opposite of what our Legislator’s intentions were when this Act was created. Please see Hansard debates.

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## CTS Licence Section 5: Security

The Proposed 2024 Licence has stricken the following:

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*The Commissioner may realize against the Security regarding and of the following once the Commissioner has made a final determination and the Licensee has failed to pay the amount owing within the specified time:*

## *5.1*

- any amounts owing by the Licensee to a Trucker pursuant to a judgement or order of a court of competent jurisdiction in relation to remuneration, wait time remuneration or fuel surcharges;*
- Any amounts owing by the Licensee to a Trucker pursuant to a decision or Order of the Commissioner in relation to remuneration, wait time remuneration or fuel surcharge;*
- and/or administrative fines owing by the Licensee pursuant to a decision or Order of the Commissioner.*

The PTA is concerned that the removal of this section leaves companies without the opportunity to pay amounts owing within a specified timeframe, instead of having the funds automatically claimed from their posted Bond.

Security bonds are costly, and in some cases  **tied directly to personal assets**. There is also the risk that once a company has had funds realized from their security, they may have difficulty upon renewal, and should they be left without an active bond (held for one full year upon the expiration, termination, cancellation or surrender of the Licence... as noted in Conditions of Licence point 6.5), the licensee is in breach of the CTS Licence terms.

The PTA understands that after 10 years of regulation, the OBCCTC has lost patience for those VERY few companies who may be continuing to skirt the rates, licence terms and regulations, however we maintain that after a review of the OBCCTC website at Decisions and Orders from the past two years, that those 'bad actors' are few and far between.

We request that the OBCCTC, with its mandate of transparency, chart and share with Licence holders and **more importantly, the public**, of the progress that has taken place since the creation of the Act. We are looking for the OBCCTC to demonstrate the mass reduction in **intended** payroll manipulation versus administrative payroll issues. Graphing the OBCCTC progress is especially important when considering changes of such magnitude and at the same time,

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expanding the OBCCTC budget by way of fees that **will ultimately be passed along to consumers.**

The PTA does not want to see company's securities drawn from as a first path of payment when many of the instances of recent issue come from inadvertent clerical error and unintended misinterpretation and **would like to see the original wording returned to the 2024 Licence.**

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## **CTS Licence Section 6: Conditions of Licence**

### **Responsibilities of Licensee**

#### **Section 6.2**

The PTA seeks to clarify that the OBCCTC has removed original section 6.2 *"Breach of a Conditional Licence may result in suspension or cancellation of the Licence, and administrative fine of up to \$500,000 and/or Orders under section 9 of the Act"* similar to selected definitions due to redundancy as fine amounts are clearly spelled out in the Act and Regulations.

### **Electronic Container Trucking Services Tracking**

#### **Section 6.7**

The PTA has maintained since the addition to the 2022 Licence, the phrasing of section 6.7 remains vague. While we understand that the OBCCTC does not wish to endorse specific programs or devices, the OBCCTC has left licensees open to unnecessary and HEAVY fines by not providing some form of system guidelines or minimum requirements for licensees to measure their systems against.

It is because of this lack of guidance, that the PTA feels that any fines levied against companies to date specific to section 6.7 should be disregarded and not considered 'non-compliance of licence' upon CTS Licence Application review for determination of the 2024 Licence.

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On one hand, we have some Licensees praised by Auditors for nothing more than submitting an electronic file that appears to display the driver's hours worked and matched payroll records. We all know that Clock-in, Clock-out times can be manipulated, and without the Auditors actually Auditing associated moves by a licensee in comparison to the driver's hours worked, we are opening a door and welcoming in a temptation for driver pay manipulation.

Audits are called Audits for a reason; they are by definition the examination or inspection of documents or accounts. While it may be tempting for the OBCCTC to place this industry in a uniform box and place a bow on it, it's just not possible and **rigorous** Audits of records with driver **hours and associated moves** will always be necessary.

The industry is seeking clarity to which it should be afforded. The OBCCTC has one clear mandate, to ensure that drivers are paid in accordance with the Act. That mandate cannot be achieved with this Commissioner's refusal to clearly define the rules of engagement when a large majority of Licensees have so many questions. To simply ignore the questions and advise carriers to wait for an Audit, is a clear failure of the Commissioner's role to ensure stability in the sector.

## **Section 6.8**

The added section 6.8 when compared to the Executive Summary leaves question as to whether the Commissioner is requiring ALL untagged trucks owned by the company or Related Person to maintain a GPS unit.

**The PTA requests clarity on the intent, reasoning, and legal Authority of section 6.8.**

## **Access to Facilities**

### **Section 6.16**

Addition of the **Access to Facilities section 6.16** notes that the Licensee can only perform Container Trucking Services at a facility in the Lower Mainland approved by the Commissioner.

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As the Proposed change does not clearly specify what is an “approved” facility, the OBCCTC cannot expect licensees to agree to such a vague term without any indication as to what this may or may not include.

The Act and Regulation give the Commissioner authority over container trucking on/off the maritime terminals within the B.C. Lower Mainland (prescribed areas). To the extent the proposals seek to regulate activities outside of that statutory authority, that would exceed the power given to the Commissioner.

The Act and Regulation only apply, pursuant to section 2 of the Regulations, to container trucking services that require access to a marine terminal. This is made clear from both the words of the Act and Regulation, and from the purpose of the Act itself.

The Act and Regulations only apply to trucking marine shipping containers at a marine terminal. There must be a marine component to the moving of the container. The proposed additions would result in the Commissioner regulating container trucking services across the Lower Mainland—including the regulation of facilities with containers that did not originate from or are going to a marine terminal. The Act and Regulation do not provide the Commissioner with the power to regulate such conduct.

Shipping Lines direct their containers movements and storage based on their business models and change from time to time. To suggest that they must only engage in commerce with Approved OBCCTC Facilities strips the freedom to do business in Canada with organizations that fit within their business model, and goes well beyond the scope of Powers that our Legislators have bestowed upon the Container Trucking Commissioner.

**The PTA asks that the Access to Facilities section 6.16 be removed from the proposed changes.**

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## Other:

### **Section 6.24**

Section 6.24 notes that a *“Licensee must take all reasonable steps to ensure that every Trucker conducting Container Trucking Services on behalf of the Licensee complies with all Conditions of the Licence.”*

As Licensees come into periods of work that exceed capacity of tagged units, and some have diversified into other areas to supplement slower periods of container work, to suggest the onus be placed on a Licensee to take every reasonable step to ensure that the trucker (licensee) providing services is in compliance with ALL conditions of **their** Licence, especially in cases of work that may fall outside of the OBCCTC jurisdiction and CTS Licence requirements, in itself is unreasonable.

The **only** reasonable step that a carrier could take and that would be palatable, would be to ensure that they have allocated the business of moving a DIRECTLY related Port container to a confirmed Licensed company. We agree that sufficient proof of that would be e-mail correspondence and nothing more. Anything further to that, will fall under the OBCCTC Auditors to determine if the contracted Licensee is complying with **their own** Licence requirements. The community thrives for clear guidelines from the OBCCTC and to continue with ambiguous terms and conditions that could have differing results from carrier to carrier and Commissioner to Commissioner does not promote stability.

The appetite for clarity surrounding the entire licence from the Commissioner’s office is real and apparent. This appetite should be setting off alarm bells within the OBCCTC and should be addressed through consultation without delay.

### **Section 6.28**

Section 2.28 notes that *“Unless the Commissioner expressly consents, in advance, the Licence terminates on change of control of the Licensee, which occurs by the transfer by sale, assignment, transmission on death, mortgage, trust, or any of means of any shares, voting rights, or interest....”*

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The PTA would like the OBBCTC to recognize that a change in ownership cannot be approved in advance, nor should there be a reasonable expectation that it be approved in advance in the case of death.

Something as emotionally and financially devastating to a family as the death of a loved one should not also result in the loss of their business and financial well-being.

**The PTA invites the Commissioner to create a separate clause specifically to allow the transfer of ownership in the event of a death in which a change of control takes place.**

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## CTS Licence Appendix A: Prohibited Practices

### **Subsection 1 (j): The Licensee must not cooperate in any way, directly or indirectly, with a non-licensee who performs unregulated off-dock container trucking services between facilities and locations within the Lower Mainland**

In the Executive Summary provided with the draft 2024 Licence, the OBBCTC notes that the language has changed in order to capture those licensees who work with non-licensees; with the intent to ensure compliance in both rates paid and the use of untagged trucks for off-dock work. With the change in language, the OBCCTC is now prohibiting loaning chassis, sharing dispatch services or utilization of premises.

The PTA understands that this language will make the role of OBCCTC staff and auditors easier, however the OBCCTC has failed to understand that many of its licensees have diversified to operate multiple companies in various areas of transportation, some of which operate off the same piece of property or out of the same building.

The PTA has always been a big proponent of diversification.



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The abuse of I/Os that has, and still continues, to flourish in terms of some (LARGER) licensed companies not having enough work for their drivers is a major factor of the destabilization of our Port trucking industry.

Container volumes vary month to month, year to year, as can be clearly seen in the Vancouver Fraser Port Authority's Container Statistics Report 2008-2024<sup>1</sup>, of which approximately 33% move by truck<sup>2</sup>.

It is the companies that have diversified operations that are able to better weather these ebbs and flows of container traffic and are able to keep drivers happy and gainfully employed by supplementing other trucking work rather than carriers who simply reduce hours or park trucks, leaving drivers frustrated and complaining to the OBCCTC about a lack of work opportunity.

Diversified carriers are typically carriers with company owned trucks. When you own a piece of equipment, maximizing its ability to generate a return is key to success. Depending purely on Port traffic is a recipe for financial disaster. Companies that employ predominately I/Os do not have any financial skin in the game, therefore are silent and reluctant to change.

Requiring a company to curtail or restrict their operations by way of licence of LAWFUL work is frankly absurd and borderline Communist.

We would like to remind the OBCCTC that **gainful employment** in definition is an employment situation where the employee receives **steady** work, payment from the employer, and that allows for self-sufficiency.

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<sup>1</sup> <https://www.portvancouver.com/wp-content/uploads/2024/02/Container-Statistics-Monthly-2008-2024.pdf>

<sup>2</sup> <https://www.portvancouver.com/wp-content/uploads/2021/03/WSP-container-forecast-final-report.pdf>; Page 14

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To ask our employees to seek out other employment depending on the highs and lows of Port container volumes puts families at risk of financial collapse.

Returning to the proposed **subsection 1(j)**, is the OBBCTC suggesting that Licensees with diversified operations and/or multiple companies can no longer provide gainful employment? Are Licensees with multiple companies being penalized with extensive financial costs to move one or more of their companies in one of the most expensive areas of Canada?

With diversification comes the need for Licensees to work with a vast network of carriers, some providing **LAWFUL** unregulated off-dock container trucking services. As the list of companies providing these **LAWFUL** unregulated services within BC, Canada and the United States is vast and ever changing, if the OBCCTC were to maintain a database of carriers it would take continued manpower and regular edits, therefore an average Licensee may or may not be aware of all transportation services provided by a third-party carrier, warehousing, storage facility, etc.

It is **KEY** to once again note that we believe that the OBCCTC is attempting to expand its jurisdiction to regulate well outside of the intent of the Container Trucking Act and Regulations by way of Licensing. Per the understanding of the industry and based on the Hansard debates - notable quotes of which are noted below (and available on the BC Government website and can be considered a reliable resource into how to read and interpret the Act and Regulations), the intent of the act was to **only** regulate Licensees for containers directly related to Marine transport, i.e. tied to a booking number.

*Per Hon T. Stone upon the inception of the Act: “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.**” - October 17, 2014 Afternoon Session of Legislature*

*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*

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*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.** - October 17, 2014 Afternoon Session of Legislature*

Had the Act and Regulations been intended to extend to ALL carriers providing both Marine related off-dock and LAWFUL unregulated off-dock, the Act would have referenced the CSE Act, similar to the Liquor Control and Licensing Act in order to properly guide Canadians on what is and is not considered Liquor and the rules surrounding sales of such substances.

In no way, shape or form would it be conceivable or acceptable if the Managers of the Liquor Control Act were to **restrict** Liquor licensees from selling .05 Beer products at their establishments for the only reason, that they hold a licence and it is more convenient to Audit. This situation rings true with the OBCCTC and any other regulatory body issuing a licence under an Act.

For an unelected Government Official to restrict **Lawful** trade and commerce by way of licence will not be tolerated by licensees or Canadians.

Operating without a licence is prohibited by Law, for ALL Canadians.

There is a reason that not one violation ticket has been issued to ANY carrier in BC for hauling a container, regardless of its composition, because it is Legal.

There is a reason that not one violation ticket has been issued to ANY carrier in BC for hauling a container that is directly destined or out-gated for a Marine terminal. It is because through the 2021 Off-dock Consultations, it was deemed too insignificant to respond to and only to be responded through the Audits.

Moving to other points that the OBCCTC must also take into consideration as unintended consequences of this Licence addition include the fact that those who purchase or rent a location may or may not have any control or say in who the other tenants are, especially

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in areas designed specifically for trucking and warehouse operations, and to force a Licensee to move in order to put distance between a licensed and unlicensed company is something the PTA feels as being outside the intended jurisdiction of the OBCCTC and completely unreasonable.

Some Licensees with multiple companies have set up shared dispatching or other staffing as well as a shared equipment pool, often due to cost, average use of equipment, and in cases of staffing, to ensure full-time gainful employment or a better pay structure. As long as Licensees can accurately pull data on their drivers' payroll, or on which truck/driver was handling a specific container in each of its legs as is already required as part of the CTS Licence and audit procedures, the PTA once again believes that the OBCCTC has overstepped in an unreasonable manner.

As for sharing chassis, the PTA would like to note that many Licensees have established close relationships with a small group of licensees and non-licensee companies, and in cases where a driver finds themselves running late to a reservation or appointment, or something has created a situation where there is a need for the use of a temporary chassis, we see the licensee borrow one from their nearest carrier as to not miss a reservation or disrupt the flow of the day. This give-take relationship allows for a reduction in flex charges, missed reservations, and upset customers. By eliminating the sharing of equipment in such a manner, we are going to see additional costs being passed along to customers, which ultimately ends up in the price increases we see in everyday goods.

It is unreasonable for the OBCCTC, for reasons unknown, to compel companies to ONLY rent chassis from APPROVED rental businesses.

It is unreasonable for the OBCCTC, for reasons unknown, to add MAJOR costs to companies operating as Licensees, further adding to our already crippling inflation numbers.

The PTA strongly requests that the OBCCTC clarify, if a chassis hauling a container is being hauled by a tagged truck and being paid at the required rates as required by the

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CTS Licence, why does ownership of the chassis matter? Again, no context offered to the community from the OBCCTC that would support the need for sweeping changes.

One final note on this particular point is that the language used clearly notes that it is not limited to the items discussed above, however by leaving this open-ended, the PTA is concerned that Licensees will find themselves being fined for situations that were not explicitly prohibited, but simply added as afterthoughts without proper communication to the industry.

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## CTS Licence Appendix B: Equipment and Safety

### **Subsection 1 (e): That all chassis owned or leased by the Licensee or Related Person be identified with a clearly visible unique identifier.**

As most equipment is adorned with a unit number, the PTA would like additional details as to what the OBCCTC is envisioning with this particular point.

The industry is and has always used CN and CP chassis pools, and it is our opinion that the OBCCTC does not possess the legislative authority that would prevent licensees from interchanging chassis.

Adding more cost to ID chassis is not something that would benefit the OBCCTC in a cost versus impact scenario.

To add to that, many carriers already have their unit numbered and to ask that **thousands** of chassis be adorned with decals in a certain manner is unreasonable at the highest level.

We would also like to reference our concerns noted in Appendix A, in which chassis sharing and rental is a common occurrence in the industry, and therefore the container number and its connection to a booking number is a much better indicator of off-dock movement than a chassis unit number.

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Should you question a carrier's chassis or container's relevance, simply request the interchange from them. They cannot be altered.

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## CTS Licence Appendix D: Required Information

### Subsection 4 a-c and 5 [a-d]:

Under the CTS Licence Appendix D, the OBCCTC required that Licensees must register themselves and for each Related Person of the Licensee who performs in part or in full container trucking services.

The requested information for all parties includes but is not limited to Business Corporate summaries, and identification of each approved vehicle directly or indirectly controlled.

The information requested is significant, and as with any and all personal and corporate information, there is fear that data may be subject to theft, loss, or unintended misuse.

Per the Act and Regulations, the OBCCTC is obligated to share details with both the Vancouver Fraser Port Authority and the Government, so there is known data transfer outside of the OBCCTC. As such, the PTA requests the following concerns be addressed in writing by the OBCCTC:

- The PTA request the OBCCTC to provide information deeming the required information necessary to carry out the work of the OBCCTC.
- The PTA would like to know what security is in place to safeguard the details that are being requested.

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- The PTA would like to know why the additional information is being requested on the 2024 Licence term, and its intended use by the OBCCTC and/or any outside parties.
- The PTA would like to know whether companies are being made aware of when and what information is being shared.

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## 2024 CTS Licence: Additional Items for Consideration

Having reviewed the 2024 CTS Licence Reform Package, the following questions have arisen given the array of troubling and extremely impactful changes being currently proposed:

- What are the initiating factors behind the proposed changes? (i.e. issues within the industry, issues with audit abilities, concerns of stakeholders or special interest groups, etc.) **We are not aware of any incidents that would cause the 2021 off-dock third party consultation and Commissioner’s recommendation to pull a complete 180.** If there was something that occurred that would prompt the office to make **sweeping impactful** changes that would **prohibit** companies from engaging in **lawful** activities, restrict how licences companies are structured, how their affiliated companies are structured, and restrict which companies Licensees can and cannot rent equipment from or engage in commerce; we ask that the incidents are shared with us.
- Are you able to share with us who is advising you on these changes? (i.e. Special interest groups, the Deputy Commissioner, industry)
- Of the initiating factors, what is the percentage of these issues seen in the daily operations at the OBCCTC at this time?

**The Port Transportation Association is sure that you can appreciate everyone’s deep concerns about a regulatory regime that’s sole purpose is to regulate driver pay and payment, flirting with amending licences that would essentially contain language that**

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would prohibit and strip a Canadian Citizen from exercising their entrepreneurial rights in a lawful manner and limit them to be able to provide to their employees, gainful employment.

To our knowledge, a regulatory body has never restricted business for anyone, as we understand Conditions of Licence 6.16 and Appendix A(j) are proposing, whether it be intentional or as an unintended consequence of a decision meant to take another issue, and while we understand that Companies do not have human rights, their directors and employees do.

As it reads in the Canadian Charter of Rights and Freedoms:

**6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.**

***Rights to move and gain livelihood***

**(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right:**

**a. to move to and take up residence in any province; and**

**b. to pursue the gaining of a livelihood in any province**

The current CTS Licence Reform Proposed changes, as they read now, have put the Commissioner in a position where there is discrimination in employment in the request to have directors sign away rights to employ themselves and others with Lawful work.

**We are of the opinion that discussions/decisions of this magnitude that call for the removal of basic rights most certainly requires far more consultation than a CTS Licence reform, but in fact should be an industry wide consultation that includes our Legislators.**

Until the industry is aware of the driving forces behind the proposed licence changes, the industry cannot adequately respond to the best of our ability, and as prefaced in our submission, we would like a second opportunity to provide a fulsome review and response once additional information can be supplied by the OBCCTC.

On a final note, the PTA would like to strongly advocate for current licensees who have been in business for a significant length of time be grandfathered into the CTS/TLS system. There are companies with 20+ years of work in the industry, and to force a continued system of un-



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guaranteed opportunity for continued business, growth and recognition for the financial commitments made to continue operations in the industry.

While it is our understanding from comments made during the PTA hosted question and answer session with Commissioner MacInnes on January 24, 2024, companies will have years of service recognized, it was noted that it will be in conjunction with audits and penalties. The PTA has spent time reviewing past decisions and orders as far back as 2016, and must point out that there are very inconsistent audits for companies over that period. Some companies have multiple, whereas others haven't seen an audit in more than five years. Audit penalties, and commissioner rulings have also seen changes in OBCCTC personnel transitions, creating an uneven scale to base demerits.

The above type of behaviour by regulatory bodies has already been stuck down by the Courts.

We thank the OBCCTC for their time and consideration with the PTA submission and look forward to continued opportunity to explore these and any additional amended 2024 CTS Licence Reform proposals.

Sincerely,

Tom Johnson, Sharn Gill, Sucha Seikhon, Harry Rattan & Gurveen Bath  
2024 Board of Directors  
Port Transportation Association

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## About the Port Transportation Association

The Port Transportation Association (PTA) was founded in 2019 to advocate for Vancouver drayage companies during industry changes initiated by the Vancouver Fraser Port Authority (VFPA) and The Office of the British Columbia Container Trucking Commissioner (OBCCTC).

The PTA has since grown to expand its focus to include industry safety, terminal fairness, and overall improvement to Canada's supply chain.

As of 2024, the PTA represents more than half of VFPA's approved local dray companies within the TLS system, and approximately 50% of all active tags.

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