



July 6, 2017

Gantry Trucking Ltd. and TSD Holding Inc.
7453 124 Street
Surrey, BC V3W 3X2

Commissioner's Decision

Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 14/2017)

Introduction

1. Gantry Trucking Ltd. ("Gantry") and TSD Holding Inc. ("TSD") (together, "the Companies") are each licensees within the meaning of the *Container Trucking Act* (the "Act"). Gantry's licence gives it seven truck tags and TSD's licence gives it 14 truck tags. The Companies pool their 21 truck tags for use by a single fleet of trucks which are owned by the Companies and driven by directly employed operators ("company drivers").
2. Amrik Sangha is the sole director of Gantry and Gurmez ("Johnny") Sangha is the sole director of TSD. The Companies use the same email address, and have the same mailing address and registered and records office address. Two other companies have the same registered and records office address as the Companies: Driver Supply Ltd., of which Gurmez ("Johnny") Sangha is the director/officer, and 24/7 Drivers & Labour Inc., of which Harsukhpaul Sangha is the director/officer. Neither Driver Supply Ltd. nor 24/7 Drivers & Labour Inc. is a licensee.
3. The Companies primarily perform container trucking services ("CTS") by moving export containers of grain for their sole customer, Global Agricultural Transloading, a company that is also owned by the Sangha family. On occasion, the company drivers also operate dump trucks.
4. Under Sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who perform CTS 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.

5. Under Section 26 of the *Act*, any person may make a complaint to the British Columbia Container Trucking Commissioner (the "Commissioner") that a licensee has contravened a provision of the *Act*. Under Section 29, the Commissioner reviews such complaints and, under Section 31, may

conduct an audit or investigation to ensure compliance with the *Act*, the *Container Trucking Regulation* (the "*Regulation*") or a licence. The Commissioner may initiate an audit or investigation under Section 31 whether or not a complaint has been received.

Facts

The complaints

6. The Office of the Commissioner received complaints in February, March and June of 2015 that the Companies were not paying their company drivers in accordance with the *Act* and the *Regulation*. Among other things, the complaints alleged that company drivers were paid less than the minimum hourly rates of remuneration required by the legislation and were not paid for all hours worked. Complainants also advised they were confused because their pay cheques were not consistently issued by one company. Pay cheques were issued by Gantry and TSD, and also by Driver Supply Ltd. and 24/7 Driver & Labour Inc. In light of the complaints, the Commissioner directed that an audit be conducted to determine the Companies' compliance with the *Act* and the *Regulation*.

The initial audit process

7. The initial audit process began on June 11, 2015, when the auditor wrote to each of the Companies and requested payroll records for the period April 3, 2014 to May 31, 2015 be delivered to the Office of the Commissioner by June 19, 2015.
8. On June 15, 2015, legal counsel for the Companies wrote to request a time extension to produce the records. Counsel wrote one letter on behalf of both companies, and from that point on, the auditor conducted a single audit of the wages paid to the pool of company drivers who performed CTS for the Companies. In their extensive communications with the auditor, neither the Companies nor their legal counsel took issue with this approach to the auditing of the Companies' compliance with the legislation.
9. Further to the Companies' request for an extension of time to provide the requested documents, the auditor granted an extension to June 29, 2015. On that date, Amrik Sangha advised by email that the Companies were unable to meet the new deadline. The auditor extended the deadline for producing the records to July 6, 2015. In a letter dated July 6, 2015, legal counsel for the Companies requested a further extension of time. The auditor referred the matter to the Commissioner, and on July 31, 2015 the Commissioner directed the Companies to provide the requested records no later than August 7, 2015.
10. The Companies delivered some records to the Office of the Commissioner on August 7, 2015.

These records consisted of time sheets completed by the Companies' office staff for some pay periods, along with corresponding pay statements (cheque stubs), and copies of cancelled pay cheques issued by the Companies. The records appeared incomplete, and the auditor wrote to the Companies on August 24, 2015 to request further records, including all daily trip sheets and truck logs completed by company drivers for the two-month period April 1 to May 31, 2015. She requested the records be delivered by August 26, 2015, extended to August 28, 2015.

11. The Companies delivered additional records on August 28, 2015, along with a note from Amrik Sangha which stated:

We are handing in all documents for Gantry Trucking. Please disregard the previous records. Sorry we had mistakes in those time sheets; our bookkeeper was new to this job. Please accept our apologize [sic] for this. If you need anything else please feel free to contact us. Our humble request we need more time for TSD Holding Inc. Records till next week. We will drop TSD Holding Inc. documents as soon as we can ...

12. Some additional records for TSD were delivered to the Office of the Commissioner on September 2, 2015, along with a note similar to the one quoted above, asking that the auditor disregard previous records due to errors in the timesheets.
13. When the auditor reviewed the records produced, she found the Companies had not provided all the requested daily time sheets and truck logs for the two-month period April 1 to May 31, 2015. She had intended to use those records to spot check the completeness of the records generally. On November 4, 2015, the auditor wrote to advise the Companies that the submitted records were incomplete and asked that all daily trip sheets and truck logs for the two-month period be delivered by November 13, 2015. She also noted that wages were sometimes paid by 24/7 Drivers & Labour Inc., and advised the Companies to ensure she received all payroll records for CTS work. Finally, she noted in her November 4, 2015 letter to the Companies that unless she received documentation to show that some company drivers had worked less than 2,340 hours in the container trucking industry, she would audit to the minimum hourly rate of \$26.28 per hour.
14. On November 13, 2015, a different legal counsel for the Companies requested an extension of time to produce the records to November 23, 2015. The records were not produced by that date. Instead the lawyer wrote again on November 23, 2015, asking that the audit be held in abeyance pending the outcome of a legal challenge to retroactivity of the legislation.¹
15. On December 15, 2015, the then-Acting Commissioner wrote to the Companies, providing notice pursuant to Section 34 of the *Act* that she intended to suspend their licenses for failing to provide

¹ I note that on June 30, 2017 the Supreme Court of British Columbia dismissed the petition challenging the retroactivity of the legislation. See *Aheer Transportation Ltd. v. Office of the British Columbia Container Trucking Commissioner*, 2017 BCSC 1111.

records for audit purposes unless the requested records were delivered to the Office of the Commissioner no later than January 15, 2016.

16. The auditor wrote to the Companies on January 7, 2016, reminding them to include with their records the names and contact information for all drivers who drove trucks for the Companies during the period April 3, 2014 to May 31, 2015, as this information had not previously been provided.
17. The Companies eventually provided further records, including daily trip sheets completed by the company drivers and truck logs. The auditor reviewed the records provided. She noted, among other things, that on the timesheets prepared by the Companies' office staff, one half-hour was consistently deducted each day for unpaid meal breaks. She also noted that on the pay statements (cheque stubs), the hourly rates paid prior to March 2015 were all well below the minimum statutory rates of \$25.13 / \$26.28 per hour. Beginning in March and April 2015, drivers were paid \$25.13 per hour, except for a few drivers who were paid \$26.25 per hour (not the statutory rate of \$26.28 per hour).
18. On February 16, 2016, the auditor wrote to the Companies, advising that she was not allowing the unpaid meal break deduction unless the Companies provided evidence the drivers had undisturbed meal breaks free from work. She also reminded the Companies that she would be auditing to a minimum rate of \$26.28 per hour. On February 18, 2016, she advised the Companies of conflicting information she had found in their payroll records and asked for an explanation.
19. Legal counsel for the Companies responded on March 17, 2016. Among other things, the Companies said that their bookkeeper made errors which were corrected by generating new records; missing records could not be located unless the Companies were given more specific information; hours worked by drivers for non-licensed companies should not be counted for compliance purposes; and drivers received company-paid lunches most days. The Companies also stated that additional requested documents would be delivered by March 22, 2016.
20. The auditor spoke with several company drivers in February 2016. They confirmed they were currently being paid \$26.28 per hour. However, they claimed the Companies were still not paying them for all hours worked. They also said they did not take meal breaks free from work, generally eating lunch while driving or waiting in line at the Port. The drivers denied participating in company-paid lunches.

The extended audit process

21. The Office of the Commissioner received more complaints against the Companies in February 2016, and the auditor extended the audit period to include the period January 1 to February 29,

2016. On March 7, 2016, she requested in writing that the Companies provide records for this extended audit period by March 18, 2016. She also wrote to the Companies in February 2016 to remind them that she still had not received a complete set of records for the two-month period (April 1 to May 31, 2015).
22. The auditor received records from the Companies for the extended audit period (January and February 2016). These records continued to show discrepancies between the hours worked as recorded by the Companies on time sheets compared with the hours worked as recorded by the truckers on their driver trip sheets and truck logs. Meal breaks continued to be deducted.
23. On July 15, 2016, the auditor advised the Companies of additional records that she believed were missing and requested an explanation by July 22, 2016. Legal counsel for the Companies requested an extension to July 26, 2016. On July 29, 2016, the auditor advised the Companies that she had received no response to her request for additional documents, and that although she continued to believe some records were missing due to conflicting Company records, she would provide preliminary calculations of adjustment amounts the Companies needed to pay their drivers in order to bring them into compliance with the legislation. She provided preliminary calculations of the amounts owing for the audit periods April 3, 2014 to May 31, 2015 and January 1 to February 29, 2016 and requested payment of the amounts by August 5, 2016.
24. After receiving some further documents from the Companies, the auditor adjusted her calculations slightly, writing to advise the Companies on July 30, 2016 that, based on the new information, she had revised her adjustment amount calculation. The new amount was calculated to be a total of \$298,237.52, owed to 52 of the 54 company drivers who performed CTS for the Companies during the two audit periods (April 3, 2014 – May 31, 2015 and January 1 to February 29, 2016).
25. The Companies accepted the auditor's calculation of the amount it owed its company drivers for the period January 1 to February 29, 2016, which was a total of \$6,911.64 owed to 21 drivers. On August 5, 2016, legal counsel for the Companies sent the auditor copies of cheques dated July 31, 2016 issued to the 21 drivers, totaling \$6,911.64.
26. The Companies refused, however, to pay the adjustment amounts the auditor had found were owing to company drivers for the period April 3, 2014 to May 31, 2015, which totaled \$291,325.88 owed to 52 of the 54 drivers who worked during that period. In an email dated August 5, 2016, Johnny Sangha challenged the hourly rate used by the auditor, arguing that Canada Pension Plan (CPP) payments should be added to the hourly rate as a "benefit" when determining the hourly rate paid. He also wrote that he was willing to pay the adjustment for 2015 but needed more time.
27. The auditor responded on August 18, 2016. She advised the Companies that CPP payments are

not “benefits” under the CTS legislation that can be included as part of the calculation of the wage rate paid. She added that the outstanding adjustment pay amount of \$291,325.88 owing to 52 company drivers was expected to be paid.

28. On August 29, 2016, for purposes of calculating how much each of Gantry and TSD owed as individual licensees, the auditor asked the Companies to identify which of them was the employer for each driver. The Companies provided that information by September 7, 2016. The Companies did not, however, pay the outstanding adjustment amounts owing to the drivers.

The attempted self-audit process

29. On September 19, 2016, the auditor sent the Companies a letter requesting that they conduct a self-audit for the unaudited periods of June 1 to December 31, 2015 and March 1, 2016 to October 31, 2016. The Companies were required to submit spreadsheets showing their calculation of amounts owing to each driver, and to include relevant information including the hours work and hourly rate paid to each named driver. This information was to be submitted by October 5, 2016.
30. The auditor received no response from the Companies by October 5, 2016. She contacted Johnny Sangha on that day and was told her September 19, 2016 letter had not been received. She re-sent the letter on October 6, 2016, requesting the required information be provided by October 20, 2016. She received no response by that date, and on October 25, 2016, she wrote to the Companies to advise that she would inform the Commissioner’s Office of their refusal to comply if the requested information was not provided by October 27, 2016. The Companies contacted the auditor by telephone on October 28, 2016 with various excuses, and sent self-audit spreadsheet information to the auditor on October 31, 2016.
31. The auditor reviewed the Companies’ self-audit information and on November 21, 2016 she wrote to the Companies, noting that the spreadsheet failed to address various matters she had identified in her earlier audits. These included failure to pay wages for all hours worked, inappropriate deductions for unpaid meal breaks, and lack of evidence that drivers paid at the lower rate of \$25.13 per hour had less than 2,340 hours in the industry. The auditor advised in her letter that she would conduct a spot audit of the Companies’ self-audit calculations, and requested all daily trip sheets, time sheets, and pay statements for two drivers for the periods June 1 to December 31, 2015 and March 1 to October 31, 2016 for that purpose. She stated the requested records for the spot audit were to be provided by November 25, 2016.
32. The auditor reports that Johnny Sangha telephoned her on November 21, 2016 and assured her the requested information would be provided by the due date; however, those records were not provided by November 25, 2016. The auditor again contacted the Office of the Commissioner about the non-compliance with her direction to provide records for audit purposes. On January 4,

2017, the Deputy Commissioner issued an Order requiring the Companies to provide the records requested in the auditor's November 21, 2016 letter by January 11, 2017. The Companies complied with this Order.

33. The auditor reviewed the records the Companies had submitted for the spot audit. She concluded the Companies had not correctly addressed the outstanding issues she had identified in her earlier audit. Specifically, daily trip sheets and truck logs indicated hours worked that had not been paid; there were errors made by payroll staff in recording the daily hours worked on the time sheet; deductions continued to be taken off for unpaid meal breaks; and there was still no evidence to support the lower pay rate of \$25.13 per hour.

The final audit process

34. On January 23, 2017, the auditor wrote to the Companies advising that she had concluded their self-audit process had not brought them into compliance with the legislation. Effectively, the auditor concluded she would have to audit the unaudited periods which the Companies had been asked to self-audit. She requested that records for all company drivers for the periods June 1 to December 31, 2015 and March 1, 2016 to January 15, 2017 be delivered to the Office of the Commissioner by January 31, 2017. She also reminded the Companies that she still required them to provide requested documents for April and May 2015.
35. The Companies submitted some records on January 31 and February 15, 2017. The auditor reviewed the records and identified a number of records that had been requested but not provided. On April 19, 2017, the Deputy Commissioner issued an Order requiring the Companies to deliver the missing information by April 25, 2017. The Companies provided some additional information on April 24, 2017. In an email accompanying the information, Johnny Sangha stated:

We're afraid that all remaining information unfortunately, is not available in our records as well. We request OBCCTC to kindly use the available information to make their decision as we are unable to provide any other supporting data. ...

36. The auditor worked with the records that the Company had provided to determine what amounts were owing to its drivers. On April 26, 2017, she advised the Companies she had concluded that, in total, for the period April 3, 2014 to January 15, 2017, the Companies owed adjustment payments totaling \$332,946.17. She requested the adjustment payments be made to drivers by May 5, 2017.
37. On May 4, 2017, Johnny Sangha stated his agreement with the auditor's calculations regarding 15 drivers who were owed adjustment amounts totally \$32,998.22 for the period January 1, 2015 to January 15, 2017. The Companies indicated they did not agree to pay any amounts found owing

for the period April 3 to December 31, 2014, based on their challenge to the retroactivity of the legislation. They also declined to pay amounts found owing to other drivers for the period January 1, 2015 to January 15, 2017, but did not specify the reason for their refusal.

38. On May 9, 2017, the auditor advised the Companies that she was preparing her audit report for the Commissioner and they were invited to make additional submissions to the Commissioner. On May 12, 2017, the Company provided information regarding whether some drivers had 2,340 hours of industry driving experience, and based on this information the auditor revised her calculations and arrived at the amount of \$328,019.68 in total owing to 66 company drivers. The revised calculation summaries and audit calculations were sent to the Companies on May 16, 2017.
39. The auditor notes in her report that, although the Companies indicated they would pay the adjustment amounts owing to 15 of the 66 drivers for the period January 1, 2015 to January 15, 2017, as of the filing of her audit report, the Companies had not shown her they had done so. She further notes the Companies' payroll records were very deficient, hindering the audit process. Specifically, the Companies failed to maintain accurate records of hours worked by company drivers, and the records that do exist show that the Companies have not paid their drivers for all hours worked doing CTS work. Further, the Companies have not implemented a system that accurately records hours worked and ensures that their drivers are paid for those hours at the correct minimum hourly rates.
40. The auditor concludes that the Companies are not compliant with the *Act* and the *Regulation*. She notes the Companies have not brought themselves into compliance with respect to past non-compliance by paying the amount she found owing to 66 company drivers, which as of the filing of her report totaled \$328,019.68 for the period April 3, 2014 to January 15, 2017. Of that amount, the auditor finds that \$49,990.89 is owed to the 15 drivers Gantry says it employs and \$278,028.79 is owed to the 51 drivers TSD says it employs.
41. The auditor reports that, in addition to not having paid the amounts found to be owing to their company drivers for past non-compliance, she is not satisfied the Companies have implemented payroll system changes to ensure compliance with the legislation going forward from the end of the expanded audit period. The Companies have not shown they have implemented a system for accurately recording and pay wages to their drivers for all CTS hours worked.
42. In response to an invitation to make a submission to the Commissioner, the Companies sent an email on June 14, 2017, attaching their calculation of hours worked by their drivers and amounts due to each driver. They also attached a list of drivers to whom they claimed to have issued cheques based on the auditor's calculations. The Companies stated in the email that they had "already submitted this to the auditor... along with other supporting documents which include

driver time sheets, port pass details, signed declaration forms by drivers who have not performed 2,340 hours on container trucking services, copies of issued cheques etc.” The email concludes by stating that the Companies have “submitted all relevant documents as per our records” and asks the Commissioner to “consider these in his calculations”.

43. The above immediately above referenced list of cheques issued to drivers lists 15 drivers and indicates cheques have now been issued totaling \$32,998.22. Upon further an enquiry by the auditor the Companies have provided copies of 7 cancelled cheques and a promise to provide additional cancelled cheques as they become available.
44. Assuming that all of the cheques listed in the attachment to the Companies June 14, 2017 email submission clear the bank, the auditor’s report demonstrates that the Companies owe their drivers adjustment amounts totaling \$295,021.46 for the period April 3rd, 2014 to January 15, 2017. Of that amount, the auditor finds that \$46,640.41 is owed to the 15 drivers Gantry says it employs and \$248,381.05 is owed to the 51 drivers TSD says it employs.

Audit Interpretation Issues and Auditor Conclusions

As evident from the above review of the facts, the auditor addressed a number of issues during the course of this audit. A summary of these issues the auditor’s conclusions are recorded in the auditor’s report:

“AUDIT INTERPRETATION ISSUES AND FINDINGS

Inconsistencies of records of hours worked:

Due to the many errors found in the Companies’ time sheets, the truck logs submitted by one complainant, and discrepancies in the records as compared with PoV’s Gate Report, I have accepted the times recorded on driver trip sheets and/or truck logs as the best available information. Gantry/TSD have challenged my calculations but have not provided any specific pay periods where they believe I am incorrect. Most recently, they have stated they accept some of my calculations but the specifics of accepted or rejected calculations are unclear.

Non-CTS Work:

The only information I have pertaining to non-CTS work is reference in some 2014 records indicating some drivers were driving a dump truck. I have excluded time attributed to this work from my calculations.

Benefits:

There is no indication of company-paid benefits in the records audited. Gantry/TSD argued that Canada Pension Plan premiums should be included as benefits in the drivers’ hourly rates. I did not accept this argument and advised the Companies accordingly.

Hours Attributed to the 2340-hour Threshold:

Gantry/TSD stated that 24/7 Drivers & Labour Inc. and/or Driver Supply Ltd. are the true employers of some drivers and hours worked for these companies should not qualify in determining the 2340-hour threshold to entitle drivers to the higher minimum rate of pay. Because wages paid by these two companies were for CTS work performed on behalf of Gantry/TSD, I have not disqualified these hours. In any event, Gantry/TSD have not argued any specific number of hours "worked for" 24/7 Drivers and Labour Inc. and/or Driver Supply Ltd. that should be excluded.

Meal Breaks:

Records for 2014 show a half-hour deduction each day for unpaid meal breaks. The Companies argued that company drivers participate in company-paid lunches on a regular basis and submitted a few receipts for pizzas in support of this position. The drivers I spoke with disputed this claim and the Companies have not made any further arguments in this regard. The records for 2015, 2016, and 2017 show one office staff member consistently deducted for unpaid meal breaks while another office staff member did not deduct for any unpaid breaks. I have not allowed any deductions for meal breaks.

Minimum rates of pay:

The minimum rates pursuant to the Regulation are retroactive to April 3, 2014, however, the Companies refuse to pay these rates until the pay period commencing January 1, 2015. Going forward from January 2015, Gantry/TSD have paid some drivers \$25.13 per hour and other drivers \$26.28 per hour. I asked the Companies on several occasions throughout the audit process to provide evidence to support payment of the lower rate and no evidence was provided until May 2017. Declarations signed by some drivers submitted to me in May 2017 stated they had worked fewer than 2340 hours in the container trucking industry during the audit period. I accepted these statements and revised my calculations accordingly.

Decision

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

- a. have not maintained complete and accurate payroll records for their drivers and instead have kept records that are incomplete and inaccurate and that have thereby caused great difficulty and delay throughout the audit process;
- b. have not provided all records requested by the auditor for audit purposes, and have delayed on many occasions in providing such records as they have, often only providing them when ordered to do so by the Commissioner or Deputy Commissioner;
- c. have failed to pay their drivers as required by the legislation and have failed to bring themselves into compliance with the *Act* and *Regulation* by paying the adjustment amounts found owing by the auditor, which total \$295,021.46 (\$46,640.41 is owed to the drivers

which Gantry says it employs and \$248,381.05 is owed to drivers TSD says it employs) for the period April 3, 2014 to January 15, 2017;

- d. have provided no satisfactory explanation for their failure to pay the amounts found to be owing by the auditor and have in many cases simply ignored her requests to pay amounts to their drivers in order to correct their non-compliance with the *Act* and *Regulation*;
 - e. Have not made changes to their payroll system to ensure compliance with the CTS legislation, such that their drivers are paid the required minimum rates for all CTS work, going forward from January 15, 2017.
46. As the Companies have not paid the amounts owing to their drivers under the legislation, or corrected their non-complaint payment practices, or complied with the requirements of the legislation, this decision will conclude with an order made pursuant to Section 9 of the Act, requiring the Companies to bring themselves into compliance with the legislation and correct their non-compliant payment practices.
 47. I have considered the Companies' submissions including the submission provided on June 14, 2017 and I am not persuaded the auditor erred in her calculations of the amounts owing to their drivers. The Companies have not provided persuasive arguments refuting the auditor's approach to such issues as the Companies' incorrect calculation of hours worked and improper deductions for meal breaks. Accordingly, I am not persuaded the Companies' calculations are accurate, and I accept the auditor's calculations.
 48. 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.
 49. 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. 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.
 50. The *Act* does not, however, require penalties to be imposed for non-compliance in all cases. Rather, the Commissioner is granted discretion to impose penalties in appropriate cases. These can include where a licensee does not cooperate fully with an audit or investigation; does not

comply with orders or directions given by the Commissioner or the auditor; delays unreasonably in paying amounts found to be owing; or engages in any form of fraudulent, deceptive, dishonest or bad faith behavior with respect to compliance with the legislation.

51. In the present case, and for the reasons which follow, I find it is appropriate to impose a penalty on the Companies for their non-compliance
52. As demonstrated above, the Companies' record keeping was grossly deficient. The auditor has determined that the Companies' record keeping was incomplete, inconsistent and often inaccurate. Amongst other things the auditor reports inconsistencies between payroll records and corresponding trip sheets and truck logs, discrepancies between payroll records prepared by the Companies' payroll staff and driver time sheets, and missing records. As I have stated on a number of occasions in the past, the maintenance of complete, accurate and up-to-date records is a fundamentally important obligation. See for example *MDW Express Transport Ltd.* (CTC Decision No. 01/17). The Companies' deficient record keeping seriously impeded and prolonged the audit process.
53. The audit process was also impeded and prolonged by the Companies' failure to provide adequate records in a timely way. Production of documents deadlines were often missed, or met with requests for extensions. On more than one occasion, documents were only produced after production orders were issued by the Office of the British Columbia Container Trucking Commissioner. In December of 2015 former Acting Commissioner Bell threatened to suspend the Companies' licence if requested documents were not produced.
54. On December 11, 2015 the then-Acting Commissioner informed the TLS community that:

On the issue of retroactive pay, we once again ask for immediate voluntary compliance of that legislation. While we have not yet exercised our discretion as Commissioners to impose penalties for non-compliance for retroactive pay to date, we are putting the industry on notice that the Office expects all retroactive pay owing to drivers can be fully paid by licence holders prior to Friday, January 22, 2016 at the very latest. Companies that come into compliance between now and January 22, 2016 may still be subject to penalties pursuant to the Act. Each case will be assessed on a case by case basis and the reasons for non-compliance will be assessed on that basis. It will not be acceptable for a TLS licence holder to simply wait until January 21, 2016 to come into compliance.

On January 20, 2016 the Acting Commissioner issued a further communication to the industry reinforcing its expectation that all licensees be in full compliance of retroactive pay owing by January 22, 2016:

1. Retroactive Pay

The Office of the BC Container Trucking Commission ("OBCCTC") issued a memo on December 11, 2015 indicating that all companies should come into compliance with respect to retroactive pay on or before January 22, 2016. That date is this Friday. We thank the many stakeholders who have already complied and provided verification of these efforts to the OBCCTC. For those TLS licence holders who have not yet come into voluntary compliance, please be advised that when such non-compliance is identified by the OBCCTC, penalties pursuant to Section 34 of the Container Trucking Act (the "Act") are likely to result after the abovementioned date.

Despite these clear warnings the Companies failed to bring themselves into compliance by the January 22, 2016 deadline.

55. Over an extended period of time the Companies have failed to properly pay their company drivers. The adjustment amounts owing to their drivers are substantial.
56. Additionally, the Companies have failed to take the necessary steps to ensure that their drivers are now being paid compliant rates including the implementation of a proper record keeping and payroll system which ensures that all hours worked are properly recorded and paid.
57. Finally, I find that during the audit process the Companies were generally uncooperative and often advanced unsupported positions and arguments which had little likelihood of success, and which served only to frustrate and delay the audit process.
58. In *Smart Choice Transportation Ltd.* CTC Decision No. 21/2016, I outlined the purpose of the penalties under the *Act* and the factors that would be considered when assessing the appropriate administrative penalty to be imposed:

The administrative penalties made available under Section 34 of the *Act* and Section 28 of the *Regulation* are designed to encourage compliance with the *Act* and *Regulation*. Penalties are intended to have a general and specific deterrence purpose – that is, to protect drivers and to discourage non-compliance with the legislation.

To ensure that licensees receive the appropriate deterrent message, the amount of any financial penalty must be sufficiently large to meet the objective of deterring non-compliance. The large financial penalties available under the *Act* and *Regulation* demonstrate an intention to ensure that administrative fines are not seen by licensees as merely another cost of doing business or part of the licensing costs.

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:

- 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 Container Trucking Services Licence;
- The need to deter those Licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

This list is not intended to be exhaustive. (Paras. 25-27)

59. Taking the following relevant *Smart Choice Transportation* factors into consideration I find that a significant penalty is appropriate here:

- a) The size of the non-compliance is significant. The audit discloses that the Companies owed their combined pool of drivers a total of \$328,019.68, of which \$295,021.46 remains owing. The period of non-compliance extends all the way back to April 3rd 2014 (the date on which the legislated rates became effective) and continued throughout the entire audit period. Much of the amount found to be owing dates back to the retroactive period. It is clear on the evidence that drivers have been seriously harmed by the Companies' non-compliant practices.
- b) The Companies have failed to take any steps to ensure that in the future drivers will be properly paid compliant rates.
- c) The Companies' non-compliant and deficient record keeping practices continued throughout the whole of the audit period. Concerningly, the companies have failed to make any reasonable effort to correct this serious problem.
- d) During the audit the Companies missed numerous deadlines, often failed to provide requested records or a complete set of records until ordered to do so, and were generally uncooperative. As a result the auditor's efforts were often frustrated and the audit results

delayed.

60. In my view a significant penalty is necessary here to deter the Companies from continuing with their non-compliant behaviours and conduct and to demonstrate not only to the Companies but to the community at large that such conduct will not be tolerated. For these reasons I have concluded that a penalty of \$30,000.00 is appropriate here.
61. In the result, and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:
- a. I propose to impose a \$30,000.00 administrative penalty against the Companies for which they are jointly and severally liable.
 - b. I have proposed that the Companies be jointly and severally liable for paying the penalty because, for all relevant intents and purposes, the Companies carry on business under their separate CTS licenses as a single family owned business enterprise and single common employer of their pooled fleet of drivers. Their businesses and ownership structure is closely associated, interconnected and related. For example the Companies are owned by members of the extended Sangha family, use the same email address, and have the same mailing address and registered and records office address. The Companies were represented by the same legal counsel during the audit process and use a combined pool of drivers to service a single customer which is also owned by the Sangha family. Additionally, the two Companies operate as a single common employer in relation to their pooled fleet of drivers and represented themselves as a single combined and interconnected enterprise and employer throughout this audit. It would be difficult, and artificial, in these circumstances to apportion responsibility for the non-compliant behaviours which are demonstrated here between the two Companies..
 - c. Should they wish to do so, the Companies have 7 days from receipt of this notice to provide a written response to me setting out why the proposed penalty should not be imposed.
 - d. If either or both of the Companies provide a written response in accordance with the above, I will consider it and advise whether I will refrain from imposing any or all of the penalties.
62. Additionally I make the following order pursuant to Section 9 of the *Act*:

I hereby order Gantry and TSD to:

- a. correct their deficient record keeping practices and bring themselves into compliance with paragraph 3, of Appendix D to Schedule 1, and paragraph (g) of Schedule 2 of their CTS Licences, including by introducing, keeping and maintaining payroll records which properly

report and track hours worked, rates of remuneration for drivers, trips completed each day by drivers on their behalf, total compensation before taxes and any other deductions are paid, and any deduction made from the drivers compensation and the reason for the deduction;

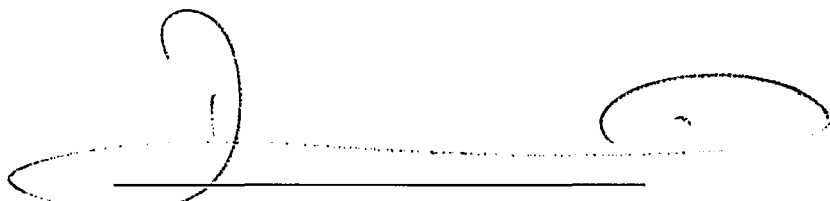
- b. comply with the minimum rate requirements set out in the *Act* and *Regulation* and in particular, without limiting the generality of the foregoing, to pay their company drivers the minimum rates established by Section 13 of the *Regulation*;
- c. comply with Section 24 (1) of the *Regulation*, which requires company drivers be paid semi-monthly and no later than 8 days after the end of a pay period;
- d. pay forthwith, and in any event no later than August 4, 2017 the adjustment amounts totaling \$295,021.46 found by the auditor to be owing to their drivers (of which \$46,640.41 is owed to the 15 drivers Gantry says it employs or employed and \$248,381.05 is owed to the drivers TSD says it employs or employed);
- e. to meet with an auditor by no later than August 11th, 2017 and demonstrate to the auditor's satisfaction that it has taken all necessary steps to bring itself into compliance with the *Act* and *Regulation*.

Conclusion

- 63. This decision outlines a particularly egregious example of non-compliance with the *Act*, the *Regulation*, and the CTS Licence. The Companies have been found not only to owe a very significant amount of wages to a large number of drivers, but also they were uncooperative with the audit process, causing significant delay and difficulties for the auditor and requiring the Commissioner to intervene in the audit process repeatedly with orders for the Companies to comply with directions given by the auditor. Finally, the Companies have not taken steps to correct their non-compliance practices.
- 64. In these circumstances, as well as ordering the Companies to pay the amounts owing to their drivers, I have proposed a significant joint and several penalty in the amount of \$30,000.00. The purpose of the penalty is to deter such egregious non-compliance by the Companies in future and to deter other licensees from engaging in such conduct. Such conduct is unacceptable and brings the CTS industry into disrepute. Licensees, including the Companies, are expected to cooperate with the CTS audit process and comply with the legislation if they wish to retain their licences and participate in this industry.

65. This decision will be delivered to the Companies and published on the Commissioner's website.
(www.obcctc.ca).

Dated at Vancouver, B.C., this 6th day of July, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a small flourish.

Duncan MacPhail, Commissioner