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



Attention: Michael Crawford, Commissioner

Dear Mr. Crawford:

Re: OBCCTC Truck Licensing System

We are counsel for the UTA Truckers Society of BC which, as I believe you are aware, represents several hundred independent truck owner operators (I/Os). Our client is concerned that you and your office (the "OBCCTC") have failed in what they say is your duty to regulate "off-dock" container trucking services being carried out by unlicensed trucking companies and truckers.

Our client has elsewhere made submissions regarding the Off-Dock Drayage Insights Report dated September 2020, prepared by Cascadia Partners. The Cascadia Report was commissioned by the OBCCTC and the Ministry of Transportation and Infrastructure. The Report posits that the Ministry has made it a "priority to ensure fair working conditions that support a stable, efficient and competitive drayage sector in the Vancouver gateway." With respect, while it may be "priority", our client is of the view that neither the Ministry nor the Commissioner has done enough to ensure fair working conditions for I/Os. Indeed, from the UTA's perspective the Commissioner has abnegated his responsibility to regulate off-dock drayage activity and, in so doing, failed to meet or respect the goals and objectives of the Ready/Bell Report and the Joint Action Plan of 2014.

The Joint Action Plan recognized the concerns voiced by container truck owners/operators, which in turn led to the 2014 work stoppage. The Joint Action Plan contains the collective agreement of the Government of Canada, the Province of British Columbia and Port Metro Vancouver to take action on a number of issues, in consideration for UTA members returning to work. In furtherance of the Joint Action Plan, our client's members did go back to work, in good faith, on the understanding that the Joint Action Plan would be implemented, including a restructuring of the truck licensing system. Sadly, while some steps have been taken, not nearly enough has been done to protect our members from being systematically disadvantaged by unlicensed competition in the off-dock sector.

Following the Ready/Bell Report and the issuance of the Joint Action Plan, the Province enacted the *Container Trucking Act* and the Container Trucking Regulation. The Regulation defines an "off-dock trip" to mean "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", other than on-dock trips or movements of containers from one location in a facility to a different location in the same facility. (The terms "container" and "facility" are broadly defined to mean, in the former case, any "metal box furnished or approved by an ocean carrier for the marine transportation of goods" and, in the latter, any "location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping", other than a marine terminal.)

To date, you have at least partially invoked your power to regulate the off-dock drayage sector, by making it a requirement that CTS licensees use only tagged trucks to carry out off-dock drayage services. For example, on April 17, 2020, the OBCCTC issued a bulletin on off-dock rates and truck tag requirements. That bulletin provides:

This bulletin is notice to all stakeholders of (1) off-dock rate and PMR requirements and (2) the [OBCCTC's] requirement that all trucks performing container trucking moves under license be tagged.

1. Licensees are required to pay off-dock rates for both trip and hourly paid drivers.
2. It is a requirement that all licensee holders pay the Commissioner's rates (set out in the Commissioner's Rate Order) for both trip-rate and hourly-rate drivers, and that license holders also pay the PMR on all off-dock moves for trip-rate paid drivers.

...

Any move of a container that meets the definitions of "container" and "off-dock trip" in the *Container Trucking Regulation* ... must be paid the required off-dock trip rate. The PMR must also be paid each time a trip-rate paid driver working for a licensed company performs an off-dock move.

Clearly, by issuing this Bulletin, you have recognized your authority and jurisdiction to regulate licensees performing off-dock container services. However, our client says that

you have at the same time turned a blind eye to the unlicensed sector. Thus, the recent Cascadia Report notes that:

In recent years, a substantial portion of off-dock drayage activity has shifted to unlicensed companies. Several TLS license holders have set up unlicensed companies or partnered with an unlicensed company to complete off-dock drayage activities less expensively. ...

OBCCTC regulations have only been applied to TLS license holders, so unlicensed companies have been free to set their own trip rates and hourly rates through collective bargaining with their drivers. These rates are often substantially lower than the TLS off-dock trip rates. Many companies in the TLS system see these affiliated companies as “shadow companies” that are exploiting a loophole in the container trucking regulation.

With respect, TLS licensing companies are not exploiting a “loophole” in the legislation; rather, they are exploiting the Commissioner’s failure to properly enforce existing legislation, namely the Act and the Regulation. The central power given to the Commissioner under the Act is the power to license container trucking services in the Lower Mainland.

On July 6, 2020, you opened the application process for new 2020 container trucking services (CTS) licenses. The form of license to be issued as of December 1, 2020, for a two-year period ending November 30, 2022, can be found on the OBCCTC’s website. It is a condition of the 2020 CTS license that a licensee carry out container trucking services using only truck tags allocated by the Commissioner on the conditions imposed by the Commissioner. Further, a licensee must assign a truck tag to each truck performing container trucking services. Thus, the proposed 2020-2022 license imposes a number of conditions on licensees, including the following relating to Truck Tags:

Truck Tags

6.8 The Licensee carries out Container Trucking Services using only Truck Tags allocated by the Commissioner on the conditions imposed by the Commissioner or as reduced or increased by the Commissioner.

6.9 The Licensee must assign either a TLS Truck Tag or a CTC Truck Tag to each truck performing Container Trucking Services.

6.10 The Licensee acknowledges that the Commissioner may consider information provided by the Vancouver Fraser Port Authority under its performance review program in determining the number of TLS Truck Tags that the Licensee is authorized to use pursuant to this License and acknowledges that that determination may vary throughout the term.

Having made it a condition of obtaining a CTS license that a licensee must assign a truck tag to each truck performing off-dock container trucking services, in our view you cannot, as Commissioner, simply turn a blind eye to the acknowledged practice of CTS licensees of setting up or partnering with unlicensed companies to complete off-dock drayage activities less expensively. By failing to prohibit these partnerships or associations, you are allowing licensees to do a complete end run around the terms of their licenses and the legislation. This, in turn, hurts the UTA's members, whose tagged trucks are severely under-utilized.

Accordingly, we submit that you must make it a condition of the 2020-2022 CTS license that CTS licensees be prohibited from being affiliated with any person or entity that carries out unlicensed, unregulated off-dock container trucking services (as defined in the Act), or from contracting with, or sub-contracting to, other persons or entities, whether affiliated or not, to carry out off-dock drayage services that the licensees could carry out themselves using their own tagged trucks. The one exception would be that if a CTS Licensee is fully occupied, it could sub-contract work to other CTS Licensees – but not to unlicensed operators.

Specifically, we submit that the proposed 2020-2022 License be amended to include the following definitions:

“Affiliate” has the meaning ascribed to that term in the *Business Corporations Act* [SBC 2002] c. 57;

“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;

“Off-Dock Container Trucking Services” means one or more movements 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”, as that term is defined in the Container Trucking Legislation, or
- b) a movement of a container from one location in a facility to a different location in the same facility;

and by adding a new clause 6.9.1 (between existing clauses 6.9 and 6.10) which provides:

6.9.1. The Licensee shall not (a) carry out any Off-Dock Container Trucking Services through an affiliate, unless that affiliate is itself a Licensee; (b) enter into a business relationship with or otherwise carry on, participate in, engage, be associated with or have an interest in any business (whether directly or indirectly, individually or in partnership or

jointly, or in conjunction with, any person or persons, affiliate, firm, association, syndicate, company, corporation or other entity, and whether as principal, agent, proprietor, shareholder, owner, investor, partner or in any other manner whatsoever) which carries on unlicensed Off-Dock Container Trucking Services (other than a holding of shares listed on a recognized North American stock exchange as a passive investment that does not exceed 5% of the outstanding shares so listed.); or (c) sub-contract any Off-Dock Container Trucking Services that the Licensee could otherwise perform itself, to any person other than another Licensee.

Please let us know as soon as possible whether you will include these proposed amendments. If you will not, we expect to receive instructions to seek an order compelling you to do so.

Very truly yours,

BURNS FITZPATRICK LLP

Per: Scott A. Turner*

*Denotes a Professional Law Corporation

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Enclosure