March 8, 2022

Safeway Trucking Ltd. and Coast Pacific Carrier Inc.
8035 170th Street
Surrey, B.C. V4N 4Y9

Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) – Decision Notice

A. Overview

1. In Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021) (the "Decision") I found that Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (together, the "Companies") committed the following breaches of the *Container Trucking Act*, *Container Trucking Regulation*, and/or licence:

    - failed to keep and make available their records as required;
    - required four employees (the "Complainants") to have an ownership or leasehold interest in equipment in which the licensee had an ownership or leasehold interest and required them to become independent operators ("I/Os);
    - made improper deductions (for truck lease/purchase payments) and incorrect fuel surcharge and trip rate payments and failed to pay drivers for some trips;
    - failed to pay one driver money owing from a previous OBCCTC audit; and
    - repeatedly sought to determine who had made complaints to the Office of the BC Container Trucking Commissioner ("OBCCTC"), including by impersonating OBCCTC staff; stopped providing and/or threatened to stop providing work to the Complainants; and cancelled or threatened to cancel the Complainants' truck insurance following the commencement of the audit, all as retribution for the filing of complaints.

2. The Companies were ordered to pay a total adjustment in the amount of $141,749.32 for money owing to seven drivers by no later than September 13, 2021. I also proposed to cancel the Companies' licences.

3. Consistent with s. 34(2) of the *Container Trucking Act* (the "*Act*"), the Companies were given 7 days to provide a written response setting out why the proposed penalty should not be imposed. The Companies requested and were granted an extension to the response deadline. On September 13, 2021, the Companies provided written submissions in response to the proposed penalty via counsel. The Companies denied all the Complainants' allegations, denied that any money was owed, and raised concerns that the OBCCTC had not provided a complete tribunal record and had not interviewed the Companies' owner, Jag Graya, during the course of the investigation. The Companies also submitted that they should be able to cross-examine the Complainants.

4. I responded on September 24, 2021 and agreed to an interview of Jag Graya but did not agree to cross-examination of the Complainants. I also provided the Companies with documents that had been inadvertently omitted from the audit/investigation report package. I did not provide audio

recordings or written transcripts of the Complainants' interviews as requested. The Companies were advised that the record before the Commissioner did not include audio recordings or transcripts of interviews.

5. The Companies replied on October 5, 2021, arguing again that cross-examination of the Complainants should be allowed. I replied on October 7, 2021 and provided further explanation as to why I did not believe that cross-examination of the Complainants was warranted.

6. On October 14, 2021, the Companies wrote to ask that I discontinue the audit/investigation process because I had "made findings without reviewing the audit record" when making my decision. The Companies repeated their submission that they should be afforded the opportunity to cross-examine the Complainants.

7. On October 18, 2021, I advised the Companies that the process would not be discontinued and on October 27, 2021, the Companies provided interview dates for Mr. Graya but also raised objections to the process once again.

8. Mr. Graya's interview was scheduled for November 15, 2021. The OBCCTC provided a translator as requested and Mr. Graya's counsel also attended. At the outset of the interview, the OBCCTC investigator asked Mr. Graya to respond to the Complainants' allegations and the Decision findings. Mr. Graya initially declined to do so, but, after some time, he provided some general statements and responses. Mr. Graya also requested that the OBCCTC conduct additional interviews with him in order to take the time he believed was required to address each Complainants' allegations in detail.

9. After Mr. Graya's interview, but still on the same day, the Companies' counsel wrote to the OBCCTC and argued that it was procedurally unfair to have asked Mr. Graya for a response to the Decision. It was the Companies' position that the interviewer should have asked a series of questions pertaining to each allegation. The Companies asked for 8-10 hours of additional interview time over several months to respond to the allegations.

10. I replied on November 22, 2021 and invited the Companies to provide further submissions in writing. I did not agree to further interviews at that time. A copy of Mr. Graya's November 15, 2021 interview report and a detailed listing of the Decision findings were provided for response. Mr. Graya had suggested in his interview that he had additional materials to provide, and the Companies were therefore invited to send any supporting documentation that had not already been provided.

11. The Companies replied on November 25, 2021 and asked that the OBCCTC also conduct interviews with Mrs. Graya and other drivers of the Companies. They also repeated their request for another interview of Mr. Graya and made submissions in support of their request. I replied on November 29, 2021 and agreed to conduct one final interview with Mr. Graya but declined to interview Mrs. Graya or company drivers other than those already interviewed. The Companies were invited to submit written statements from Mrs. Graya and the Companies' employees and did so. They also submitted a written statement from Mr. Graya, which is in many respects identical to Mrs. Graya's. Mr. and Mrs. Graya's statements are dated December 21, 2021.

12. Mr. Graya's second interview was conducted on December 10, 2021 and a copy of the

interview/investigation report summarizing his first interview was provided in advance of his second interview.

13. The Companies supplied their final submission on December 22, 2021. I have considered all of the materials before me, including Mr. Graya's interview reports, the Companies' September 13, October 5, 14 and 27, November 15 and 25, and December 22, 2021 submissions, and the written statements by the Grayas, and provide the following Decision Notice.

B. The Company's Response

General Objections

14. The Companies argue that because the OBCCTC did not provide the audio recordings and written transcripts of the Complainants' and Mr. Graya's interviews, they have not been provided with the complete tribunal record.

15. The Companies also argue that I have delegated my decision-making authority to the OBCCTC investigator because I did not listen to the audio recordings or review transcripts of the Complainants' interviews.

16. The Companies also submit that they ought to have been given an opportunity to cross-examine the Complainants given the severity of the proposed penalty (licence cancellation).

17. The Companies further submit that licence cancellation is not the appropriate remedy because it would be a "crushing or unfit sanction" that would negatively impact the Companies' employees and other parties and harm the stability of the sector.

Response to Decision

18. The Companies deny retaliating against the Complainants and argue that there is no evidence that any violations of s. 28 of the *Act* occurred. It is the Companies' position that the complaints were made in retaliation against them after Complainant 4 was caught forging employment documents to obtain a mortgage.

19. The Companies acknowledge sending one letter to Complainant 4 (dated February 17, 2021) advising him that they had placed a "fraud alert" on his name, filed a police report about him, initiated legal proceedings against him, and contacted ICBC regarding a claim he allegedly made.

20. Complainants 1, 2 and 3 each stated that they received a phone call from someone purporting to be from the OBCCTC asking if they had made complaints, but the Companies deny making these phone calls and suggest that the OBCCTC made the calls.

21. In response to the finding in the Decision that they breached their record-keeping obligations, the Companies maintain that all payroll records pertaining to the period 2016 to 2020 were stolen from a shed at the Companies' home office. They have also cited a legal action against Coast Pacific Carrier Inc. and the ex-owner of that company as the reason why bank records cannot be obtained.

22. In response to the finding that the Companies required the Complainants to have an ownership or leasehold interest in a truck and become I/Os, the Companies state that the Complainants were converted to I/Os at the Complainants' request. The Companies note that the trucks at issue continue to be available for pick-up at the Companies' yard and state that they should not be penalized (and the auditor's calculations should be adjusted) for the Complainants' failure to pick up the trucks.

23. In response to the amount of money found to be owing, the Companies ask that the auditor's calculations be revised to account for periods of time when two drivers were not working. The Companies also respond to the audit calculations as follows:

    - The Companies did not make incorrect trip rate payments or fail to pay drivers for some trips because the I/Os identified in the audit were paid hourly;
    - The Companies did not charge drivers for port fees and truck parking;
    - The Companies did pay the fuel surcharge, although some payment errors may have occurred; and
    - The Companies cannot provide evidence that its drivers were paid correctly because their records were stolen.

24. The Companies state that monies owing under the previous audit have been paid and proof of payment has been provided to the OBCCTC.

C. Consideration of the Companies' Response

25. Before discussing the Companies' response, I will make some general comments on the decision-making process laid out in the *Act*.

26. The *Act* provides licensees two opportunities to respond to a penalty: once in response to a penalty proposed in a decision and again (if applicable) in response to a penalty decision (decision notice). In each case, licensees are invited to provide reasons why a penalty should not be imposed or why it should be changed.

27. The most common reasons given by licensees can be grouped into two general categories. The first category broadly encompasses issues of administrative law, such as the duty of procedural fairness or the exercise of the Commissioner's discretion. The second category involves issues specific to the audit and/or investigation. Licensees may provide new records or other information that was not available or considered during the audit/investigation or the decision-making process. They may also identify issues or concerns that were not considered by the auditor/investigator or the decision-maker. This allows the Commissioner to review, consider, and address issues as they arise, as has occurred here.

<u>Companies' General Objections</u>

28. The Companies have argued that the audit and investigation process has been procedurally unfair because Mr. Graya was not interviewed prior to the Decision because they were not initially asked to respond to the investigator's reports, and because they have not been supplied with audio recordings and written transcripts of investigation interviews.

29. I agree that Mr. Graya should have been interviewed prior to the Decision. Mr. Graya has since been interviewed twice and I have now considered his interview reports. I also recognize that the OBCCTC cover letter to the audit and investigator reports sent to the Companies for response did not specifically reference the attached investigator's reports, and that this may be why the Companies did not initially take issue with the investigator's reports. The Companies have now had opportunity to respond to the investigator's reports.

30. I have also addressed the Companies' concerns about the audio recordings and transcripts of the interviews prior to the final decision. In a letter to the Companies dated October 18, 2021, I responded to their concerns, stating that the OBCCTC does not provide audio recordings or transcripts of interviews and that Commissioners generally review only the interview reports prepared by the investigator and do not listen to the audio recordings.

31. The Companies argue that this cannot be accepted because it is not a published practice. The Companies argue that the Commissioner is obligated to publish rules of practice and procedure under s. 6 of the *Act* and that the lack of published practice and procedure has resulted in a procedurally unfair audit/investigation. The Companies do not say that they reasonably believed or expected that they would be provided with audio recordings or written transcripts. Nor am I aware of any reason they would have expected this. I considered similar submissions in Rideway Transport Ltd. (CTC Decision No. 09/2021) – Decision Notice ("Rideway") where I noted that s. 6 of the *Act* does not require the Commissioner to enact rules but provides that the Commissioner may make rules respecting practice and procedure.

32. Audio recordings and transcripts are not generally reviewed by the Commissioner in the decision-making process and were not reviewed in this case. This is the usual approach, but it is not set in stone. Accordingly, the Companies' request for audio and written transcripts was ultimately considered on its own merits.

33. I do not accept that audio transcripts must be shared with the Companies as a matter of procedural fairness in these circumstances. This is the case for several reasons, most of which were relevant in Rideway as well. I did not review or consider the audio recordings in this case, and they are therefore not part of the record upon which my decision is based. The audio recordings were not transcribed and are not part of the record either. The OBCCTC investigator reports/interview summaries are thorough and detailed. There was nothing about them that concerned me, and they were not the sole basis for my findings in any event. They have been shared with the Companies, and the Companies have been given an opportunity to respond to them.

34. The Companies have not said why they should review the audio recordings except to say that without them they do not have access to the complete record. I do not believe that the audio recordings are necessarily part of the record and I see no compelling reason why the Companies would need the audio recordings in light of the considerations set out above. I also note that the Companies' counsel was present during the interviews with Mr. Graya and that both Mr. and Mrs. Graya have provided written statements following Mr. Graya's interviews.

35. The Companies also argue that because I have not heard the audio recordings of the Complainants' interviews, I have arrived at my conclusions based on the investigator's reports alone, thereby

delegating my decision-making power to the investigator. The Companies argue that the decision-making powers of the Commissioner are non-delegable and that I have failed to apply my own mind when making my decision. Comparable submissions were made in Rideway.

36. My findings are based upon the entirety of the record before me, including the investigator and auditor reports, written statements by Mr. and Mrs. Graya, the Companies' submissions, and supporting documentation provided by both the Complainants and the Companies. Also, when I consider the investigator and auditor reports, I consider the facts outlined in the reports and base my findings on those facts, which may or may not align with conclusions made by the investigator or auditor.

37. The Companies have asked on several occasions to cross-examine the Complainants on the basis that the findings against the Companies are serious and that the Complainants "failed to provide useful documentary evidence to substantiate their allegations." Comparable submissions were also considered in Rideway.

38. In my September 24, 2021 correspondence to the Companies, I advised that cross-examinations are not part of the OBCCTC's process and that the *Act* does not provide for a right of cross-examination. In a subsequent letter dated October 7, 2021, I advised the Companies that I did not consider cross-examinations appropriate or necessary in the circumstances of their case. I continue to believe that the Companies have had sufficient opportunity to contradict and challenge the Complainants' evidence through their interviews and written submissions. The Companies have also had opportunity to submit documentary evidence.

39. I am satisfied that the Companies have been provided with sufficient opportunity to understand and respond to the allegations against them. They saw and responded to the documentary evidence submitted by the Complainants. They reviewed and responded to the investigator and auditor reports. They were granted extended time to respond to the Decision, and I have now considered statements made by Mr. and Mrs. Graya as well as Mr. Graya's interviews and the Companies' written submissions. Although they did not produce very much relevant documentary evidence, they were provided the opportunity to do so.

40. The *Act* does not explicitly provide for cross-examination. Cross-examination of complainants by licensees and/or their legal counsel could have a chilling effect on future complaints. This has to be considered against the possible benefits of cross-examination (and in circumstances where the licensees would not be subject to cross-examination). As I stated in Rideway, allowing for cross-examination of drivers could be sufficiently intimidating to dissuade drivers from making complaints against licensees; this would be inconsistent with the overall purposes of the *Act*. The following from Rideway is also relevant (footnotes have been omitted):

> [38] Container trucking drivers are vulnerable to mistreatment by licensees and their protection has always been a primary consideration of government and the OBCCTC. For example, the *Act* was introduced following a work stoppage in 2014, which ended upon the signing of a Joint Action Plan that committed to the introduction of a number of reforms, including a whistleblower mechanism "for the reporting of concerns related to compliance with trucking licensing system requirements (including compensation provisions) or incidents of intimidation or harassment related to container drayage activity." A confidential complaint line was

established and is now administered by the OBCCTC.

[39] Much of the *Act*, *Regulation* and the CTS Licence provisions are based upon recommendations made in a report drafted by Vince Ready and Corinn Bell ("Ready/Bell") in the context of the 2014 work stoppage. In their report, Ready/Bell noted that drivers who come forward to report a non-payment, undercutting, or kickbacks are fearful about losing their jobs or suffering other negative employment consequences. Ready/Bell recommended that "the strictest of penalties" should be imposed "in the face of evidence of retaliation or retribution."

[40] Section 28 of the *Act* recognizes that drivers may be harassed or coerced or otherwise mistreated because of a complaint, inspection or investigation. This section represents a legislative attempt to keep licensees from punishing a driver for making a complaint. In the CTS Licence, licensees are prohibited from threatening, harassing, coercing, or attempting to influence truckers regarding their right to compensation. The OBCCTC has a mandate to ensure maximum protection for drivers against licensee mistreatment and retaliation. These factors militate strongly against cross-examination of complainants by licensees and/or their legal counsel.

41. Where s. 28 violations are alleged, as is the case here, the argument against cross-examination of complainants by licensees and/or their legal counsel becomes even stronger.

Companies' Response to Decision

Requiring company drivers to have an ownership or leasehold interest in a truck and become I/Os

42. The Complainants allege that in January/February of 2018, the Companies' owner, Jag Graya, approached them to advise that they would not be given work unless they purchased company trucks. The Complainants say that they agreed to purchase trucks as a result.

43. The Companies submit that it was the Complainants who approached Mr. Graya in 2018 asking to become I/Os and to purchase company trucks because the Companies were in the process of replacing company trucks with trucks owned by I/Os and because the Complainants wished to earn a better and high standard of living. The Companies state that they agreed to the Complainants' requests and entered into verbal agreements under which the Complainants would purchase the trucks by monthly installment payments.

44. The Complainants agree that the agreements to purchase trucks were verbal and that monies were deducted from their pay until late 2018/early 2019. Only Complainant 2 currently owns one of the trucks. Complainant 2 acknowledges that ownership was transferred to him but says that Mr. Graya told him that the purchase price included both the truck and associated truck tag, although he later learned that it did not. Complainant 3's truck was transferred to him, but he later transferred ownership back to the Companies. Complainants 1 and 4 state that they asked Mr. Graya to transfer ownership of their trucks to them but that he never did; Complainant 4 also states that Mr. Graya later advised him that the truck could not be transferred to him because the truck tag was non-transferrable.

45. The Companies respond that once the trucks were paid in full, ownership ***was to be*** transferred to the Complainants, but Complainants 1 and 4 did not take the necessary steps to have their trucks transferred into their name. They state that Complainant 2's truck was transferred to him and have provided evidence of the transfer. The Companies further say that Complainant 3's truck was also transferred to him, but that the Complainant transferred ownership back when he could not secure insurance in his name.

46. In the Decision, I found that the Companies threatened the Complainants with a loss of work if they did not become I/Os and required the Complainants to buy company-owned trucks, both in violation of Appendix A of their CTS Licence. I arrived at this conclusion because the Complainants' statements were detailed and consistent with one another and the Companies had not responded with detailed submissions or evidence to the contrary.

47. The Companies have since provided documentation which confirms that they transferred legal title to Complainant 2. They have also provided explanations as to why Complainants 1, 3 and 4 do not own the trucks in question. However, these explanations are not relevant to the Companies' breaches of Appendix A. The question of whether title was transferred to the Complainants, including who initiated or failed to initiate the transfer, is a red herring.

48. Along the same lines, the Companies' assertion that the Complainants approached them about purchasing the trucks and becoming I/Os is not particularly relevant. Licensees must not engage in practices (a) through (e) of Appendix A regardless of who initiates the action. The genesis of the prohibited practices identified in Appendix A come from the Ready/Bell report. Ready/Bell recommended that these practices be prohibited because they were some of the known, and most concerning, "games" being played at the time of the last work stoppage. Ready/Bell specifically noted that the "undercutting and gamesmanship" was being carried out by "companies ***and drivers.***" [1]

49. In any event, the requirement that the Complainants buy company trucks and become I/Os was implicit in the choice that the Companies put before the Complainants. The Complainants stated that they were told that they would not be given work if they did not buy company trucks. This is consistent with the Companies' September 13, 2021 statement that they were in the process of discontinuing company trucks, replacing company drivers with I/Os, and reducing the company fleet when they were approached by the Complainants in 2018. The Complainants were then faced with a choice, initiated by the Companies' business decisions, between job loss or truck purchase. This is not a true choice but is tantamount to a requirement and is in breach of section 1(a) of Appendix A.

50. The Complainants were also faced with a choice between being fired or becoming illegitimate I/Os. This also was tantamount to a requirement and a breach of section 1(e) of Appendix A.

51. The trucks sold to the Complainants had assigned company truck tags, not I/O truck tags. To convert the truck tags, the Companies would have had to advise the Port that the ownership of the trucks had been transferred and that the truck tags had been assigned to I/O trucks. They would have also had to sign Sponsorship and Joinder Agreements with the Complainants. However, they

[1] Recommendation Report – British Columbia Lower Mainland Ports, October 2014, Ready/Bell, pages 31 & 32.

could not do so because the Complainants were not on the Commissioner's I/O List under the OBCCTC Truck Tag Policy.[2]

52. The Complainants were therefore not "legitimate" or "recognized" I/Os: they did not have an I/O truck tag and were not on the I/O List. This meant that they could not leave the employment of the Companies to fill a vacant I/O truck tag elsewhere. The Companies, on the other hand, would have benefitted from this arrangement by offloading truck costs[3] and avoiding the cost of replacing the trucks under the Port's anticipated truck age policy[4]. The Companies also benefitted financially from by paying the Complainants by the trip rather than by the hour, as well as by paying them non-compliant rates.[5]

53. I do not accept that the Companies sold the Complainants the trucks so that they could earn a better and high standard of living. Rather, the opposite. The Companies sold the Complainants the trucks because the Companies wished to reduce costs and make more money.

54. In their May 28, 2021 submission, the Companies argued that if the truck payments are returned to the Complainants, then the Complainants should not be considered I/Os for the purpose of the audit calculations (should instead be compensated based on the hourly rates applicable to employees) and the trucks "can and should be used or sold" by the Companies. In the Decision, after consideration of this submission and others, I determined that the Companies breached s. 32(2) of the *Act* when they deducted truck payments from the Complainants' pay and ordered the Companies to return the money. I declined to treat the Complainants as company drivers for the purpose of the audit calculations because the Companies had not paid them as company drivers and because the Companies were at liberty to use or sell the trucks if they wished.

55. In response to the Decision, the Companies altered their earlier position and invited the Complainants to pick up the trucks. They also argued that the Complainants should not be compensated as I/Os if they are also refunded their truck payments because this would be an unjust

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[2] The OBCCTC Truck Tag Policy facilitates I/O movement between licensees using the existing truck tag and sponsorship system. In late 2017, the Truck Tag Policy was amended, and an I/O List was introduced. All I/Os who were sponsored by a licensee under a CTS Licence at the time were added to the I/O List and, since then, names have only been added to the List under certain circumstances. I/Os on the I/O List are entitled to move between licensees provided the licensee has an available I/O truck tag. Licensees may only sponsor I/Os who are on the List. The I/O List provides I/Os with a level of protection that ensures work opportunities for the limited number of approved I/Os in the sector.

[3] The Companies state that in 2018 they were in the process of replacing company trucks with trucks owned by I/Os. A licensee changes its fleet composition when a different composition will either save money or increase revenue. Selling company trucks reduces truck ownership and operating costs.

[4] The Port of Vancouver's Rolling Truck Age Program caps the age of container trucks serving the port and ages out truck models older than 10 years from the port authority's Truck Licensing System. The Port of Vancouver began consulting on this policy as early as 2014 and the Companies would have known there was a truck age policy coming into effect as of February 1, 20, (though that has now been pushed out to May 1, 2022). Once the policy is in effect, any truck ten years or older will no longer be able to access the Port and would therefore be of much less value to I/Os are companies whose primary activities are container trucking services.

[5] Using I/Os paid by the trip instead of the hour also saves money, because trip rate drivers are less expensive than hourly rate drivers for long distance trips or trips that take a long time to complete because drivers are stuck in line ups or delayed at terminals and only I/Os recognized as such are paid for terminal delays through a wait time payment distributed by the Port.

enrichment of the Complainants. In the Companies' final submission, they argue that they should not be penalized for the Complainants' failure to collect the trucks, by which I understand them to mean that they should not be made to pay back the purchase price of the trucks when they no longer wish to be in possession of them.

56. The Companies were ordered to pay money owing to the Complainants based on an I/O pay calculation because that is how the Complainants were paid by the Companies, to the Companies benefit. The Companies were ordered to repay the truck payments because the *Act* does not allow them to make those deductions. I agree that the Complainants would be unfairly enriched if the purchase price of the trucks is returned to them *and* they collect the trucks from the Companies, but three of the Complainants do not own the trucks and cannot therefore simply collect them. It is also open to the Companies to rescind their offer to the Complainants. Complainant 2 owns his truck and may be enriched when the price of the truck is returned to him, but any overcompensation enrichment will not be substantial considering that the truck has almost no value because of its age (2007) and its pending removal from the TLS system (under the Port's anticipated truck age policy a 2007 truck cannot be tagged).

Monies owing to drivers

57. The Companies ask why some sections of its May 28, 2021 submission were not accounted for in the audit calculations.

58. In paragraph 129 of the Decision, I note in the final bullet that the auditor's calculations were amended for the two drivers cited by the Companies in their submission. The amended amounts owing are reflected in the figures cited in paragraph 135 of the Decision. However, I have reviewed the letters provided by the two drivers and identified one two-week holiday (March 1 – 17, 2019) taken by one driver that was not accounted for in the auditor's calculations. The auditor has now revised her calculations and reduced the money owing to one driver by two weeks to account for the holiday. As such, the total amount owing to all drivers is revised to **$141,379.59**.

59. The auditor's calculations were based on trip rate payments in the period between March 1, 2018 and May 31, 2020. On November 12, 2020, in response to an OBCCTC audit letter, the Companies stated that drivers were switched to an hourly pay model in 2018 and that therefore the Companies do not owe the Complainants any money. In their latest submission, the Companies continue to argue that the Complainants are owned no money (except for some fuel surcharge payments owed as a result of clerical errors) because they were paid hourly beginning in 2018 and were not charged for port fees or truck parking.

60. Regarding this last point, the auditor did not calculate any money owing for port fees or truck parking. Regarding how the drivers were paid, the Complainants allege that they were not paid hourly until the spring of 2020 and have provided records demonstrating that they were paid by the trip in the period between March 1, 2018 and June 30, 2019.

61. The auditor also spoke with two other drivers (not the Complainants) who said they had been switched to hourly pay sometime in June or July 2020, but documents provided by one of the drivers showed that he was paid by the hour in July 2019. As the Companies cannot produce payroll records, the auditor considered records for both drivers for the periods of November and December

2018 and January 2019 that had been supplied by the Companies to the OBCCTC as part of a truck tag application. These records were provided to the auditor by the OBCCTC, who noted in the audit report that the drivers were paid by the trip during those periods. These records were also provided to the Companies for review and comment.

62. The records available indicate that the Companies paid their drivers by the trip until at least June of 2019 and statements from the Complainants and other drivers suggest that the conversion may not have occurred until 2020. The Companies have provided no evidence in response and have not disputed the authenticity of the records obtained from their truck tag application or from other drivers. Accordingly, I accept that the Complainants were paid by the trip until June 2020, and that the auditor's calculations are correct.

63. The Companies say that all monies owing under the previous audit have been paid and that proof of payment has been provided to the OBCCTC. The Companies cannot supply bank records to support this statement, but they did previously provide photocopies of two cheques dated March 1 and 23, 2018 in the combined amounts of $534.01 to demonstrate that payment was made to Complainant 1. This evidence was addressed in the Decision, where I determined that the photocopies do not demonstrate that the cheques were cashed or even given to Complainant 1.[6]

64. The Complainants allege that Mr. Graya provided cheque images to the OBCCTC in 2018 to demonstrate payment but that he never gave the actual cheques to the drivers. The Companies deny this allegation; however, they have a demonstrated history of not paying drivers for money owed during the previous audit period.[7] As the Companies cannot produce records, have provided no evidence to support their claim, and have been penalized for failure to pay a driver in similar circumstances, I do not accept that Complainant 1 has been paid the money owed to him from the previous audit.

Record-keeping violations

65. The Companies have provided no evidence demonstrating that the Complainants were paid correctly during the audit period. They continue to maintain that all records pertaining to the audit were stolen in August 2020 and that they cannot access bank records for the period prior to June 2019 because of a civil action initiated by the bank against Coast Pacific Carrier and the father of Mr. Graya's deceased partner. However, I note the inconsistency in the Companies' submissions regarding access to their bank records. The Companies first stated that they could not access bank records because Mr. Graya's signing authority had been revoked by his deceased partner's estate administrator in a legal action between Mr. Graya, Safeway Trucking Ltd. and Coast Pacific Carrier and Gurmeet Gill (estate administrator), not because of an action by the bank against Coast Pacific Carrier Inc., Gurmeet Gill and Mr. Graya.[8] The Companies have also not explained how either of these actions mean that they cannot access banking records.

[6] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraphs 130-134.
[7] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 11/2020).
[8] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraph 65, quoted from an email dated October 19, 2020 between the Companies and the OBCCTC auditor.

66. I noted in the Decision that the police report about the alleged record theft stated that the person who filed the complaint reported that nothing was missing.[9] Mr. Graya has since submitted that this is incorrect, noting that he and his wife filed the complaint and citing his subsequent email to the attending officer detailing the missing records. The initial report was made on September 17, 2020 and cites only Mrs. Graya as the interviewee. Mr. Graya's email was sent on September 29, 2020 and does list missing records.

67. However, whether the records were stolen is immaterial. The Companies' record-keeping violations are not in question. They have failed to make available the requested records as required by the terms of their licence. In the Decision, I discussed the importance of keeping and providing proper records, noting that the "purpose of the *Act* is, in large part, to ensure that drivers are remunerated correctly, and the audit and enforcement requirements of the Commissioner cannot be properly fulfilled without complete, accurate records."[10]

68. The Companies cannot respond to the audit calculations with blanket denials and cite a lack of evidence when the lack of evidence is the result of their record-keeping failures. As noted in the Decision, the Companies' practice of storing records in a garden shed was wholly insufficient and resulted in their failure to keep and make available records as required by the licence. A licensee's failure to produce records, particularly if the failure is the result of poor records management, including subpar storage practices, cannot mean that drivers are not compensated. A failure to properly maintain and produce records as required may also result in a penalty.[11]

69. The Companies state that they have corrected their record-keeping practices by hiring a professional accountant, installing surveillance equipment at the owner's house and keeping a digital back-up of records on a server. They have supplied an invoice dated March 14, 2021 to demonstrate the implementation of the new security measures. The invoice provided is for the installation of an alarm and a security camera at the Companies' owner's house as well as the installation of electronics, electronic infrastructure and entertainment systems unrelated to record-keeping. The installation of these various things at the owner's home, six months after the alleged break-in, does not suggest that the Companies are committed to improving record security. Furthermore, the Companies have provided no evidence in support of their claim that a professional accountant has been hired.

70. Records should be safely stored at a licensee's place of business or at a secure and accessible commercial storage location. There may be some exceptional circumstances which would warrant storing payroll records in a home (although perhaps not a garden shed), but the Companies have not suggested that there were exceptional circumstances. The Companies have not changed my mind on the record-keeping violation.

[9] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraphs 106 and 107.
[10] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraph 109.
[11] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraph 110.

Retaliation in breach of s. 28 of the Act

71. In the Decision, I found that the Companies repeatedly sought to determine who had made complaints to the OBCCTC, including by impersonating OBCCTC staff. I found that they stopped providing and/or threatened to stop providing work to Complainants 1, 3 and 4, and cancelled or threatened to cancel the Complainants' truck insurance following the commencement of the audit in retaliation for the Complainants' having filed complaints. The Companies also sent threating letters to Complainant 4.

72. Section 28 of the *Act* prohibits licensees from mistreating truckers as a result of a complaint, investigation, investigation, or other enforcement action. Among other things, licensees are prohibited from refusing to continue to employ or retain a trucker or threatening or intimidating a trucker.

73. The Companies argue that the Complainants' allegations are "baseless and unsubstantiated" and maintain that there is no evidentiary basis for me to conclude that they violated s. 28. It is the Companies' position that Complainants 1, 3 and 4 chose to stop working, or received little work, because business was slow, not because the Companies gave them less work in retaliation for filing complaints in breach of s. 28(a).

74. In the Decision, I accepted the Complainants' allegations because they were generally consistent with one another, were corroborated by Complainant 1's pay records and supplemental evidence supplied by Complainant 4.[12] The Companies deny that they gave the Complainants less work, but provide no evidence demonstrating that business was slow after the Complainants initiated complaints (June 2020 – November 2020 specifically). The Companies cite statements from its other drivers who all attest that they are treated fairly by the Companies and receive work, but no statement cites the amount of work they received during the period in question as compared to the amount they ordinarily received. The Companies do not directly address the allegation that they cancelled or threatened to cancel the Complainants' truck insurance.

75. The Companies have provided background information and documents intended to demonstrate that the Complainants' allegations, and in particular Complainant 4's allegations, are false and should not be relied upon. Specifically, the Companies allege that the genesis of the complaints was their January 6, 2019 discovery that Complainant 4 "was misusing the company letterhead and forging Mr. Graya's signatures to obtain a mortgage(s) from financial institutions." Mr. Graya has also alleged that Complainant 4 fabricated pay stubs. The Companies state that Complainant 4 was not authorized to prepare letters confirming employment or to do accounting work. Mr. Graya states that he confronted Complainant 4 about the issue and told him that he would notify the bank where Complainant 4 was attempting to secure a mortgage and the police about the misuse of the company letterhead. Mr. Graya states that Complainant 4 threatened to file complaints against the Companies in response.

76. The Companies first raised this allegation with the OBCCTC on November 12, 2020. It was raised again on December 15, 2020. In response, an OBCCTC investigator interviewed the Complainants,

[12] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraph 121.

including Complainant 4, again. Complainant 4 denied falsifying pay records but admitted to drafting a letter confirming his employment in mid-October 2018. Complainant 4 states that he provided this letter to Mr. Graya, who then signed, scanned and returned it by email. Complainant 4 states that he assisted Mr. Graya with accounting work and was asked to draft letters of employment for other employees but denied forging Mr. Graya's signature on them. Complainant 4 states that the Companies never accused him of falsifying documents during his time of employment.

77. The Companies state that there was no reason for them to authorize Complainant 4 to perform accounting tasks or draft letters of employment. However, there could be many reasons why Complainant 4 was assisting the Companies with accounting, including because the Companies did not use the services of a professional accountant until at least March 2021 (the date the Companies say they hired an accountant).

78. The Companies have provided pay stubs, allegedly forged by Complainant 4. I have reviewed the pay stubs. They demonstrate only that Complainant 4 was employed and paid by the Companies. There is no indication that the paystubs were forged and no accompanying explanation as to how they demonstrate that Complainant 4 forged them.

79. The Companies say Complainant 4 prepared his October 2018 letter of employment without their knowledge or consent and falsified the owner's signature. The Companies cite a February 17, 2021 letter signed by Mr. Graya, noting that signatures on the October 2018 and February 2021 letters are different. Complainant 4 admits to preparing an employment letter in October 2018 but denies signing the letter with Mr. Graya's signature. When showed a copy of the October 2018 letter supplied by the Companies, Complainant 4 was unsure if it was the same letter he drafted in October 2018.

80. Complainant 4 has already admitted to drafting the letter and also states that the Companies never accused him of falsifying documents during his time of employment. Regardless of whether the Complainant signed for Mr. Graya, I do not accept that controversy around the Complainant's October 2018 employment letter motivated the complaints to the OBCCTC.

81. The Companies have also provided an email as evidence of when they became aware of the alleged fraud. That email has message headings identifying who the email was from (Complainant 4), when it was sent (January 6, 2019), who it was sent to (the Companies) and the subject of the email ("job letter"). There is no content in the email and no listed attachment. This evidence only demonstrates that Complainant 4 sent the Companies an email titled "job letter" on January 6, 2019. This is consistent with the Complainant's statement that he was in the process of securing a mortgage in late 2018 and discussed the need for an employment letter with his employer.

82. The documents provided by the Companies are unhelpful but, more importantly, the Companies' allegation that the Complainants lodged complaints because the Companies exposed their fraud does not add up. The Companies state that they became aware of the alleged fraud after having received an email from Complainant 4 in January of 2019. They state that they subsequently confronted Complainant 4 and threatened to notify the bank and call the police. The Companies confirmed the RCMP investigation on March 15, 2021 and the OBCCTC obtained a copy of the police

report from the police which indicated that the Companies made a complaint about the alleged fraud on February 24, 2021.

83. It does not make sense that the Companies did not notify the police about the alleged fraud until February 2021, two years after becoming aware of the incident and five months after becoming aware of the audit/investigation. The Companies provide no explanation for this delay.

84. The Companies also attempt to discredit all four Complainants, suggesting that the other Complainants were beneficiaries of Complainant 4's alleged fraud and also lodged complaints because the Companies identified Complainant 4's alleged fraud. Complainant 4 stated that he prepared employment letters for Complainants 1 and 3 but the Companies have provided no evidence that they raised concerns with the other Complainants at the time.

85. I think it is more likely that Complainant 4 did some accounting work for the Companies in 2018, including preparing some employment letters for signature, and that, in response to the audit/investigation and the Decision, the Companies have attempted to mischaracterize what happened in order to impugn the Complainants' credibility. I do not accept the Companies' submissions in this regard.

86. In the Decision I found that the Companies were involved in phone calls made to the Complainants to determine if they had complained in breach of s. 28 of the *Act*. The Companies deny involvement in the phone calls discussed in the Decision and suggest it was likely someone from the OBCCTC who contacted Complainant 3, although no such calls were made by OBCCTC staff.[13] In general, I do not find the Companies' denials on this matter credible. As the calls were not made by the OBCCTC, the only plausible explanation is that they were made on behalf of the Companies as part of their efforts to determine who complained to the OBCCTC. Such actions would be consistent with the Complainants' statements that Mr. Graya and other company drivers inquired with them about the complaints on several occasions.

87. The Companies also sent threatening letters to Complainant 4 in breach of s. 28 of the *Act*. One letter, sent on February 17, 2021, accused Complainant 4 of fraud, noted that a "fraud alert" had been placed in his name with "all banking institutions" and stated that the Companies had filed an RCMP report and written to ICBC regarding a loss claimed by the Complainant in October 2020. The letter concludes by advising that Complainant 4 will be sent a "court notice" a "few days later" and that the Companies "hope" Complainant 4 will cooperate with "this upcoming investigation."

88. The Companies acknowledge sending the February 17, 2021 letter. However, they deny the letter was a threat, stating that it was a "step taken to warn the financial institutions" about Complainant 4 and drafted in response to an ICBC query.

89. I do not accept the Companies' explanation. In my opinion the content of the letter was threatening and there was no reason to send a letter to the Complainant in response to an inquiry from ICBC directed at the Companies. The Companies threatened to disseminate a "fraud alert" to "all" financial institutions and to bring legal proceedings against the Complainant but did neither. Mr. Graya states that he called one financial institution rather than "all banking institutions." The

[13] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraph 123.

Companies have provided a copy of an email they sent to ICBC but have not provided evidence that ICBC was investigating an accident involving the Complainant. A threat is a communication of an intention to inflict damage on a person in retribution for something that a person has done or has refused to do. Threats are meant to be intimidating and the prospect of responding to a legal action, or a police investigation, or maintaining a relationship with a bank once all financial institutions have been advised that you have engaged in fraudulent activity, would be threatening to anyone.

90. The second letter is on Global Unity Consulting Corporation letterhead and also dated February 17, 2021. The letter is signed by Jasmeet Dhaliwal and addressed to Complainant 4. It is titled "Re: Debt owed to Coast Pacific Carrier." A detailed description of the letter's content was included in the Decision. Global Unity Consulting Corporation is a real company, the details of which were confirmed by the OBCCTC investigator.

91. There is no evidence to suggest that the allegations made in the letter (debts owed on a truck and a potential lawsuit) are true and it is inexplicable why someone representing a consulting company, not a collection agency, and who is apparently not affiliated with the Companies, would prepare and send such a letter. The letter has the same date as the letter signed and sent by Mr. Graya. It asks that payment be directly remitted to the address associated with Coast Pacific Carrier Inc.

92. Mr. Graya denies that the second letter was sent on his behalf and denies any knowledge of Global Unity Consulting Corporation or Jasmeet Dhaliwal but provides no explanation as to why a company he knows nothing about would be directing money to Coast Pacific Carrier Inc. I find that the letter from Global Unity was in fact sent on Mr. Graya's instructions to intimidate the Complainant.

93. The Companies state that there is no evidentiary basis to conclude that they have violated s. 28 of the *Act* but in fact the two letters dated February 17, 2021 are documentary evidence of this. The Complainants' accounts are further evidence.

94. The Companies advance a counter allegation of fraud. Even if I were to accept that Complainant 4 committed fraudulent acts, which I do not, that would be relevant only to the Complainant's credibility. It would not necessarily determine whether the Companies threatened, discriminated against, intimidated or coerced Complainant 4 or any of the other Complainants in breach of s. 28 of the *Act*. Unsubstantiated counter allegations do not advance the Companies' defence. In this case, I am not persuaded that the Complainants' allegations are false or that they were made in response to the Companies' accusations of fraud. The Companies have not changed my conclusions that they have breached s. 28 of the *Act* by repeatedly seeking to determine who made complaints to the OBCCTC (including by impersonating OBCCTC staff), by ceasing to provide and/or threatening to stop providing work to Complainants 1, 3 and 4, and by cancelling or threatening to cancel the Complainants' truck insurance. I accept that the Companies did so in retaliation for the Complainants' having filed complaints. I also find that the Companies sent threating letters to Complainant 4 in retaliation.

95. Mr. and Mrs. Graya state that they treat all members of the Companies as family and have provided letters from company drivers (other than the Complainants) attesting to their satisfaction with their employment. I accept that these drivers support the Companies, but these letters are not evidence

that the Complainants are lying or that the Companies did not violate s. 28 of the *Act*. One of the drivers who authored a support letter was implicated in the Companies' sale of a truck to Complainant 1 and participated in the Companies' efforts to identify who made the complaints, as did another of the authors. I would expect drivers who were closely aligned with the Companies in the past and who have a financial interest in ensuring the Companies retain their licenses to attest to their satisfaction with the Companies.

D. Conclusion

Breaches of the Act, Regulation and License

96. In the Decision I determined that the Companies violated sections (a) and (e) of Appendix A of the CTS Licence by requiring four employees to have an ownership interest or a leasehold interest in trucks in which the licensee had an ownership interest or leasehold interest and requiring the same four employees to become I/Os. The Companies have not changed my mind on these issues for the reasons set out above.

97. I also found the Companies in violation of s. 23 of the *Act*, section 23 of the *Regulation* and sections 1 and 2 of Appendix E of the CTS Licence for failure to properly pay seven drivers for the time periods between June 30, 2016 and June 1, 2020, including the failure to pay one driver following a previous audit where the Companies misrepresented that the driver had been paid. The Companies have established that monies found to be owing should be adjusted by a small amount to account for holidays but have not established that they have in fact paid drivers correctly or that the driver owed money based on the previous audit has been paid.

98. In the Decision I further found that the Companies violated s. 25 of the *Act* and part 4 of Appendix D of the CTS Licence for failure to keep and make available their records as required. The Companies do not suggest that they have not breached these provisions. Instead, they explain why they have failed to meet their record-keeping obligations. I do not necessarily accept all of the Companies' explanations, but their explanations are irrelevant in any event.

99. Of particular importance in the Decision was my finding that the Companies violated s. 28 of the *Act* multiple times by repeatedly seeking to determine who had made complaints to the OBCCTC, sending threating letters, no longer providing and/or threatening to stop providing work to the Complainants, and cancelling or threatening to cancel the Complainants' truck insurance. I concluded that the Companies repeatedly violated subsections 28(a)(b) and (d) in their treatment of Complainants 1-4. Section 28 breaches are serious, and as outlined above, the Companies have not convinced me to alter my findings.

100. The legislative and regulatory regime was introduced to prevent the conduct that occurred in this case. In the Decision, I proposed to cancel the Companies' licenses, in part on the basis of their non-compliance, their history of non-compliance, and the fact that previous financial penalties have not had the desired effect. The Companies' responses do not alter my conclusion on the appropriate penalty. Their response submissions consist largely of denials and accusations against the Complainants without sufficient supporting evidence.

Relevant considerations

101. I am not convinced that anything less than licence cancellation would be appropriate. The Companies conclude their general arguments by submitting that "the pursuit of general deterrence does not warrant imposing a crushing or unfit sanction" which, they suggest, would negatively impact the Companies, their employees, other parties, and the stability of the sector.

102. The need to deter other licensees from non-compliant behaviour is only one factor considered when assessing an appropriate penalty. Other factors include the seriousness of the licensee's misconduct, the harm suffered by drivers, the extent to which the licensee was enriched, the damage done to the integrity of the industry, and the licensee's past conduct.[14] A licensee's cooperation during the audit process, including its compliance with orders and directions of the Commissioner and whether it has engaged in meritless disputes of amounts found to be owing, are also considered.[15]

103. Specific deterrence is also relevant. Licence cancellation may be appropriate when a licensee does not alter its behaviour following previous penalties. It may also be necessary to ensure that licensees engaged in particularly egregious conduct that the *Act* was enacted to address are prevented from operating in the industry.[16]

104. In this case the Companies' violations are serious, in particular the s. 28 violations. Section 28 was enacted in response to driver concerns that they would lose their jobs or suffer other negative consequences if they came forward to report non-payment, rate undercutting or kickbacks. It was also enacted in response to Ready/Bell who also recommended that the strictest of penalties be imposed in the face of evidence of retaliation or retribution.[17]

105. In Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice, I observed that licence cancellation could result in greater industry stability. I noted that the Lower Mainland drayage sector had been destabilized by rampant rate undercutting that ultimately resulted in government introducing the *Act* and the available penalties, which include licence cancellation. The industry is stable when drivers are fairly compensated, and the successful enforcement of the rates depends on drivers having certainty that they will be protected when they report instances of rate undercutting.[18] Section 28 is therefore central to the *Act*'s purpose, and this is why I consider s. 28 violations to be particularly egregious.

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[14] Smart Choice Transport Ltd. (CTC Decision No. 21/2016).

[15] Harbour Link Container Services Ltd. (CTC Decision No. 04/2016), paragraph 16.

[16] Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 06/2020), paragraph 21. This case was reconsidered (CTC Decision No. 02/2021) and the licence cancellation imposed in the reconsideration decision was judicially reviewed but the court did not consider the penalty largely because it became moot. The question of penalty was remitted back to me, and the maximum fine was imposed instead because the licence in question had already expired.

[17] Recommendation Report – British Columbia Lower Mainland Ports, October 2014, Ready/Bell, page 37.

[18] Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice, page 3.

106. The degree to which drivers have been financially harmed and the Companies enriched is also relevant here. The Companies were found to be owing $141,749.32 to their drivers. The drivers have been financially harmed by at least this amount over a four-year period and the Companies have enriched themselves by the same amount.

107. The Companies' record-keeping violations factor in here as well. It is important that drivers receive the compensation that is owed to them. As mentioned above, this contributes to the stability of the industry. It is one of the fundamental purposes of the *Act* and is why each licence holder is required to provide security. It is the responsibility of the Commissioner to make best efforts, using available resources, to quantify monies owing to drivers when licensees have been found in breach of the minimum rate requirements. In this case, the complete lack of company records has impacted my ability to make an accurate award. The auditor can only base her calculations upon the records available (driver records and historic records held by the OBCCTC for other reasons). Previous decisions of the Commissioner have highlighted the importance of proper record keeping and have imposed penalties for failure to meet the record keeping requirements of the Licence.[19] Here, missing and unavailable records have undermined the OBCCTC audit and impacted my ability to make an accurate award. The Companies' record-keeping violations affect drivers' compensation and are another important factor in considering the appropriate penalty in this case.

108. Additionally, the Companies are repeat offenders. In the Decision, I noted that the Companies have a history of non-compliance that includes rate and record-keeping violations as well as failure to comply with orders of the Commissioner. In February 2018, Safeway Trucking Ltd. was penalized $10,000.00 (for failure to comply with orders of the Commissioner following a finding of non-compliance for failure to pay the correct rates).[20] In September 2020, the Companies were penalized $15,000.00 (for failure to pay a driver for all hours of container trucking services performed).[21] In November 2021, it was determined that the Companies had failed to comply with the 2018 Decisions and Orders.[22]

109. These penalties have not had the desired deterrent effect. The Companies have argued in response to previous penalties that their noncompliance did not reflect the policies of Mr. Graya and would not be repeated. However, the Companies have in fact repeated their non-compliant behaviour. They also argued that they operate the Companies and treat their drivers in accordance with the *Act*.[23] This is also untrue.

[19] See for example Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) and Hutchison Cargo Terminal Inc. (CTC Decision No. 27/2018), paragraph 22.
[20] Safeway Trucking Ltd. (CTC Decision 05/2018).
[21] Safeway Trucking Ltd. and Coast Pacific Carrier Inc. (CTC Decision No. 11/2020).
[22] Order against Safeway Trucking Ltd. and Coast Pacific Carrier Inc., November 26, 2021.
[23] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 07/2021), paragraphs 146 and 147.

110. I am also mindful of the fact that the Companies were aware of the legislative and regulatory requirements but chose to undermine the integrity of the OBCCTC enforcement process by providing false evidence (copies of two cheques that were never given to Complainant 1) to demonstrate compliance in response to this audit. This is particularly egregious as the Companies have a history of providing false evidence to demonstrate compliance and not paying drivers following an order to pay.[24]

111. Licence cancellation is an appropriate penalty in this case for the reasons noted above and also because it is the most effective means of ensuring that licensees do not view penalties as just another cost of doing business. I have previously stated that:

> …the *Act* does not require, nor should licensees expect, that a licence cancellation will only occur after a series of graduated fines. If the circumstances of an audit warrant it, licences will be cancelled in order to protect the integrity of the Commissioner's enforcement program and fulfill the purpose of the *Act*. [25]

112. Nor should licensees expect a licence suspension to follow graduated fines. A licence suspension may be appropriate in limited circumstances which do not apply to this case. For example, it may be a useful penalty when a licensee has failed to comply with an order and the term of the suspension is pegged to compliance with the order, but I am not convinced that licence suspensions are generally deterrent or corrective. A licence suspension would only be serious to licensees depending solely on port access for their business and these Companies do not. To overcome a short-term licence suspension, the Companies would simply have to contract out the container trucking services portion of their business for a time. Only a long-term licence suspension could disrupt the Companies' operations to the degree that it may dissuade them and others from future violations; however, it is unclear how long that suspension would have to be and at what point the suspension would have the same effect as a cancellation in any event.

Companies' submissions on penalty

113. The Companies argue that the cancellation of their licenses will have "grave economic ramifications" for the Companies, their employees and customers, and will cause "great harm" to the stability of the container trucking sector in the Lower Mainland, particularly given the current economic circumstances brought on by the pandemic and recent weather events. In the Companies' September 13, 2021 submission, Mr. Graya's history as an I/O who drove for the Companies for 7 years is noted and letters of support from two customers are provided.

[24] Safeway Trucking Ltd./Coast Pacific Carrier Inc. (CTC Decision No. 11/2020); and Order against Safeway Trucking Ltd. and Coast Pacific Carrier Inc., November 26, 2021.
[25] Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 06/2020) (Reconsideration of CTC Decision No. 12/2019), paragraphs, 20, 21 and 39.

114. Similar submissions were made by Gulzar and Jet Speed, the only other licensees that have faced a licence cancellation penalty.[26] In that case, I found that the personal and financial impact of a licence cancellation on the owner did not outweigh the considerations weighing in favour of the cancellation. I make the same finding in this case.

115. Like the owners of Gulzar and Jet Speed, Mr. Graya cites his background in the industry and the time and money he has invested in the Companies as evidence of the impact that licence cancellations would have. I am aware that licensees invest significant resources into their businesses, but I do not accept that these investments mean that licence cancellation is not a suitable remedy. Surely an owner who invests considerable time, effort and money in a business that must adhere to specific legislated requirements would make best efforts to be compliant, particularly if the owner was a driver during previous work stoppages and therefore intimately familiar with the *Act*'s purpose. Yet neither his investments in the Companies nor his own background have dissuaded Mr. Graya from committing repeated violations of the *Act, Regulation* and licence. Despite his investment in the Companies and his financial obligations, Mr. Graya has engaged in ongoing noncompliant activity and risked findings of non-compliance in order to enrich himself.

116. The Companies provide a range of trucking services primarily for the forestry industry that include, but are not limited to, container trucking services requiring a CTS Licence. There is no evidence to suggest that a loss of CTS licence, resulting in an inability to access marine container terminals, would lead to the collapse of the Companies' business. Indeed, recent performance statistics compiled by the Port and shared with the Companies indicate that they accessed marine terminals at a rate below the industry average over the last three months of 2021. This indicates that the Companies are providing limited container trucking services and are perhaps providing other services that do not require a licence.

117. When considering licence cancellation, I weigh the impact of the licence cancellation against the need to address longstanding and chronic non-compliant practices across the sector. In this case, I believe that the importance of addressing the Companies' continued non-compliance outweighs the impact of a licence cancellation on its drivers, who are likely to find work at other licensees with OBCCTC assistance. It also outweighs the minimal impact on the Companies' customers. The volume of containers moved by the Companies to and from Port of Vancouver container terminals (2,500 per year for three customers) can be absorbed by other licensees. As such, the licence cancellations will not destabilize the sector.

118. In conclusion, having carefully considered the Companies' submissions, and for the reasons outlined above and in my Original Decision, I will not refrain from imposing the proposed penalty. In the result, I hereby cancel Safeway Trucking Ltd./Coast Pacific Carrier Inc.'s Container Trucking Services Licences effective April 7, 2022.

[26] Gulzar Transport Inc. and Jet Speed Transport Inc. (CTC Decision No. 12/2019) – Decision Notice.

119. I also order the Companies, pursuant to s. 9 of the *Act*, to immediately pay the total amount owing to the seven drivers identified in the revised auditor's calculations ($141,379.59) and provide proof to the auditor that payment of the money has been made to each driver by no later than April 7, 2022.

120. Safeway Trucking Ltd./Coast Pacific Carrier Inc. may request a reconsideration of the Commissioner's Decision by filing a Notice of Reconsideration with the Commissioner not more than 30 days after the company's receipt of this Decision Notice. A Notice of Reconsideration must be:

a. made in writing;
b. identify the decision for which a reconsideration is requested;
c. state why the decision should be changed;
d. state the outcome requested;
e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel; and
f. signed by the applicant or the applicant's counsel.

121. Despite the filing of a Notice of Reconsideration, the above order remains in effect until the reconsideration application is determined.

122. This decision notice will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 8th day of March, 2022.

Michael Crawford, Commissioner