

March 2, 2023

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

Dear Mr. MacInnes :

Re: 2023 Rate Review Recommendation Report, Proposal 2

Thank you for the opportunity to provide feedback on the above proposal.

BC Trucking Association is a member-based, non-profit, non-partisan organization dedicated to advocating for and representing the commercial road transportation industry in BC. BCTA represents approximately 1,200 trucking and motor coach fleet members that operate over 13,000 commercial vehicles and employ over 26,000 British Columbians.

In the above report, proposal 2 states: "Overtime rate based on Employment Standards Act's short haul driver rate for company and indirectly employed operators (IEO') who work more than 9 hours a day or 45 hours a week."

A cornerstone of BCTA policy is regulation must be effective, efficient, and evenly applied. Membership is unanimous in their call to ensure that all employees in British Columbia are compensated, at the minimum, with payments as required by law. Our members note that the agency responsible for enforcement is identified in the proposal itself; the Employment Standard Branch.

The OBCCTC is funded directly and entirely by TLS carriers. These companies also already fund an agency to address these issues. As a fundamental goal of BCTA is to create a stable, prosperous, equitable drayage sector that does not require an entirely separate regulating entity, our members believe it important that that path is not obscured by parallel, repetitive

structures. All workers in British Columbia have the right to work in safe workplaces where remuneration is paid in keeping with the law. We do not feel it reasonable to have one sector forced to fund an entirely separate structure when the current law applies to all British Columbians.

We do not see an advantage to further isolating this sector – the only economically regulated sector in the trucking industry in Canada -with another separate structure. In our view, it's long past time to bring this sector into compliance with regulation and law outside the OBCCTC's mandate using the tools available to every other worker in BC, not by further isolating this sector.

If not already done so, we also would encourage the OBCCTC to seek legal advice before these changes are made. While it appears the proposal does not purport to "enforce" ESA provisions, it will be critical to ensure that the OBCCTC has the authority to set working conditions. While there is certainty that the Commissioner may set rates, the Act and Regulation are less clear about the Commissioner's authority to determine thresholds for payment of overtime. While "benefits" and "remuneration" are tightly defined and referenced in the enabling legislation, "overtime" is not noted. While the "Employment Standards Act" is referenced several times in the enabling legislation, we are concerned that reading in the OBCCTC's authority to encompass what is already addressed elsewhere in law, without specific legislative direction to do so, may result in conflict where none is required.

The same issue arises when consideration turns to federally-regulated employees in the drayage sector. While these employees work long haul routes, it is not uncommon for them to work within the lower mainland for time to time. Codifying when the Canada Labour Code applies is a challenging decision, and we encourage your office to examine the issue should you choose to proceed with the recommendation.

We also believe it critical for your office to draw to drivers' attention that enforcement of overtime will not necessarily lead to higher remuneration. It is reasonable to expect companies that have built their business models not paying overtime, if (appropriately) forced to do so, would change their hours of operation, business model of fleet make up to avoid the higher rates of pay. This is in no way a comment to not enforce the law, but rather to ensure that those impacted understand potential impacts.

Your way ahead



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Please do not hesitate to contact me directly should you have any questions or concerns, or if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Earle", is enclosed within a thin black rectangular border.

Dave Earle
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