



February 26, 2024

Veronica S. C. Rossos
Direct Line: +1 604.643.1301
vrossos@millerthomson.com

Via Email

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

Attention: Commissioner G. MacInnes

Dear Commissioner MacInnes:

Re: Submission re: 2024 CTS Licence Reform. Proposed Changes

As you are aware, we are counsel of Canada Drayage Inc. ("CDI") and write further to the Commissioner's consultation process and invitation for stakeholders to make submissions in respect of the 2024 CTS License Reform, Proposed Changes ("CTS LRPC").

Our client has instructed our office to deliver the following submission on its behalf.

Introduction

1. Having now reviewed the CTS LRPC we are of the view that certain specific proposed changes to the licence equate, at least in part, to an attempt by the Office of the British Columbia Container Trucking Commission (the "OBCCTC") to expand, and exceed, its jurisdiction through the tagging and licensing function.
2. In particular, under the guise of licence conditions, the proposed changes are in fact amendments to the Container Trucking Act Regulations.
3. The CDI submits that the Commissioner does not have authority to introduce new regulations; that power rests exclusively with the Governor in Council.
4. Further, many of the proposed changes will significantly impact CDI's business (and the business of CDIs competitors who engage in both port and non-port work in the Lower Mainland) as the Commissioner is attempting to regulate not only port related work but also non-port related work. Respectfully, this far exceeds the Commissioner's mandate which is to govern the "transport [of]

marine shipping containers from the Port of Vancouver to elsewhere in the Lower Mainland area of British Columbia”¹.

Facts

1. The Office of the British Columbia Container Trucking Services was established to:
 - (a) Establish rate regulation for drayage companies that **service the Port of Vancouver** (“PMV”);
 - (b) Ensure compliance through audits and investigations;
 - (c) Provide better accountability within and accessibility for the drayage sector²; and
 - (d) “...to regulate the issuance of licences and set minimum rates for payment of drivers, in order to provide labour stability. Container trucking companies seeking to provide **services requiring access to a marine terminal within the Lower Mainland** are required to apply for a licence from OBCCTC”.³
2. It has been announced that the OBCCTC intends to introduce a new Container Trucking Services License (“CTS Licence”), effective December 1, 2024.
3. The OBCCTC has broken down the proposed changes into four (4) distinct categories which are:
 - (a) Off-dock enforcement;
 - (b) Sponsorship Agreement;
 - (c) Terms and Conditions of Employment and retainer of Truckers; and
 - (d) Housekeeping

(collectively the “Proposed Amendments”).
4. The OBCCTC has invited stakeholders to make written submissions in response to the Proposed Amendments
5. CDI, as a stakeholder make this submission in response to the Proposed Amendments.

¹ *Safeway Trucking Ltd. v. Office of the British Columbia Container Trucking Commissioner*, 2023 BCSC 589 at para 1.

² <https://obcctc.ca/about-the-obcctc/mandate-overview/>

³ *Gulzar Transport Inc. v. British Columbia (Container Trucking Commissioner)*, 2023 BCSC 1601 at para 6. (emphasis added)



6. CDI is a member of the Fastfrate Group of Companies.
7. Fastfrate is an intermodal LTL and TL carrier which operates facilities and provides services coast to coast.
8. CDI, while a part of the Fastfrate Group of companies, is a separate and distinct corporate entity from Fastfrate.
9. The Fastfrate group of Companies is comprised of five (5) distinct corporate entities:
 - (a) Fastfrate – a privately held intermodal LTL carrier;
 - (b) CDI – drayage provider which manages the transport of sea containers to and from major ports, rail yards, and distribution centres in Canada and the US;
 - (c) Fastfrate Integrated Logistics – logistics provider with strategically located facilities and an integrated network of 4,500 partner carries to create efficiencies throughout the supply chain;
 - (d) Challenger Motor Freight – transports goods across North America as well as internationally with a full range of full truck load transportation, logistics, warehousing and managed supply chain services; and
 - (e) ASL Distribution – customized transportation, warehousing, and distribution services including ecommerce fulfillment direct to consumer
10. Given the corporate structure within which CDI operates it is particularly concerned with those proposed amendments which purport to go to off-dock enforcement.
11. Fundamentally many of the proposed changes to the License would put CDI at a competitive disadvantage solely as a result of the corporate structure within which it resides.
12. CDI makes this submission in response to the CTS LRPC.

Law

1. The breadth and scope of the Commissioner's jurisdiction are defined by the legislative framework as set out in the *Container Trucking Act*, SBC 2024, c. 28 (the "Act") and the *Container Trucking Regulation*, BC Reg. 248/2014 (the "Regulations").
2. Part 3 of the Act specifically addresses issues as related to Licenses, Rates and Fuel Surcharges. Part 3 of the Act specifically distinguishes between the commissioner's authority to impose conditions on a licence and the Governor in Council's ability to make regulations. Specifically, the Act and Regulations provide, *inter alia*:



Licence required

16 (1) A person must not carry out prescribed container trucking services in a prescribed area unless

- (a) the person holds a licence issued to that person that gives the person permission to carry out container trucking services in the specified prescribed area, and
- (b) the person carries out the container trucking service in compliance with
 - (i) this Act and the regulations,
 - (ii) the licence, and
 - (iii) if applicable, an order issued to the person under this Act.⁴

3. S. 2 of the Regulations defines prescribed trucking services and area as:

Prescribed trucking services and area

2 (1) The container trucking services prescribed for the purposes of section 16 (1) [licence required] of the Act are container trucking services that require access to a marine terminal⁵, but do not include:

- (a) container trucking services performed by a trucker on behalf of a licensee, using a truck with a truck tag issued by the commissioner, or
- (b) transportation of a container to or from a location outside the Lower Mainland.

(2) The area prescribed for the purposes of section 16 (1) of the Act is the Lower Mainland.

4. S. 18 of the Act goes on to provide the following regarding the imposition of conditions on licenses:

Conditions on licence

18 (1) In issuing a licence under section 16 (4) (a), the commissioner may impose any conditions that the commissioner considers necessary.

(2) Without limiting subsection (1), the commissioner may impose a condition on a licence respecting

- (a) the payment of wait time remuneration by the licensee to truckers employed or retained by the licensee, and
- (b) subject to the regulations, if any, the terms and conditions of employment or retainers respecting truckers employed or retained by the licensee.⁶

⁴ Act, s. 16

⁵ Regulations, s. 2

⁶ Act, s. 18



5. Finally, Division 2 of the Act provides that rates and surcharges may be established and that such rates and surcharges are to be established by the Lieutenant Governor in Council. s. 22 provides:

Rates and fuel surcharges may be established

- 22 (1)The Lieutenant Governor in Council may, by regulation,
- (a)establish an initial minimum rate that a licensee must pay to a trucker who provides, in specified circumstances, specified container trucking services to or on behalf of the licensee,
 - (b)establish a rate under paragraph (a) based on one or more of the following:
 - (i)a rate per trip;
 - (ii)an hourly rate;
 - (iii)any other basis the Lieutenant Governor in Council considers appropriate,
 - (c)for the purposes of paragraph (a), specify one or more circumstances and one or more container trucking services on any one or more of the following:
 - (i)the starting point of the container trucking services;
 - (ii)the end point of the container trucking services;
 - (iii)the geographic area within which the container trucking services are carried out;
 - (iv)the dates or times of the container trucking services;
 - (v)the duration or distance travelled during the carrying out of the container trucking services;
 - (vi)any other basis the Lieutenant Governor in Council considers appropriate,
 - (d)for the purposes of paragraph (b) (i), specify which container trucking services or which parts of the container trucking services constitute a trip to which a rate established under paragraph (b) is to apply,
 - (e)specify the time by which a rate established under paragraph (a) must be paid, and
 - (f)establish an initial minimum fuel surcharge, based on a specified unit of fuel used during the provision of container trucking services, that a licensee must pay to a trucker who provides, in specified circumstances, specified container trucking services to or on behalf of the licensee.⁷

Submission

A. Off-dock enforcement

1. While CDI appreciated that the Commissioner wishes to “enhance [its] enforcement ability”⁸, CDI respectfully submits that the CTS Licence is not the

⁷ Act, s. 22

⁸ CTS LRPC, at page 5



appropriate venue to impose the proposed changes. Rather, the appropriate venue for the introduction of such changes is through the Regulations.

2. CDI submits that the power to make regulations does not rest exclusively with the Commissioner but engages the jurisdiction of the Lieutenant Governor in Council.⁹

3. Amendment to Appendix A

- (a) CDI respectfully submits that it opposes the proposed amendment to Appendix “A” as this proposed amendment exceeds the jurisdiction of the OBCCTC. Specifically, CDI submits that the prohibition against cooperation is not a “condition” as contemplated in s. 18(1) of the act but rather a regulation as contemplated by s. 44 of the Act.
- (b) Further, and in addition to the above submission this amendment is impractical in CDI’s circumstances. As set out above CDI is a member of the Fastfrate group of companies and, as a consequence, regularly and in the ordinary course of business cooperates directly and indirectly with other companies under the Fastfrate umbrella.
- (c) This proposed amendment does not merely “capture those licensees who work with non-licensees to avoid paying the regulated rates or using untagged trucks”; but goes further than that by penalizing companies who engage in both port and non-port work.
- (d) Respectfully, the OBCCTC does not have jurisdiction over the non-port related elements of Fastfrate’s business. This amendment appears to both grant the Commissioner that jurisdiction while severely, and without authority, interfering with Fastfrate’s business.
- (e) Finally, this proposed amendment does not provide a consistent, fair, and transparent approach to licensing but rather does the opposite by adding a level of opacity to the licensing and enforcement process.

4. Amendment to Appendix D

- (a) CDI respectfully submits that it opposes the proposed amendment under Appendix “D” as this proposed amendment exceeds the jurisdiction of the OBCCTC.
- (b) Specifically, the proposed language goes further than simply ensuring that the OBCCTC is aware of all Related Persons associated with a licensee for the purposes of tracking any sub-contracting out of work with related companies.

⁹ Act, s. 44



- (c) This amendment reaches beyond the Commissioner's purview by purporting to grant the Commissioner oversight, or some indistinct right of oversight, over Related Persons who have no connection with, or to, Container Trucking, the Act, or the Regulations.

5. Section 5.24 – Conditions of License

- (a) CDI respectfully submits that it opposes the proposed amendment to at section 5 (5.24) of the Licence as this proposed amendment exceeds the jurisdiction of the OBCCTC.
- (b) Not only does this amendment impose an undue burden and obligation on off-dock yards to police this license condition but would also impose conditions on the Licensee which exceed the OBCCTC's jurisdiction

6. Section 5 – Electronic Container Tracking Services

- (a) CDI respectfully submits that it opposes the proposed amendment to s. 5 as this proposed amendment exceeds the jurisdiction of the OBCCTC.
- (b) This proposed amendment far exceeds the OBCCTC jurisdiction as it would extend the Commissioner's reach to capture vehicles that are not at all involved in container trucking services requiring access to a marine terminal in the lower mainland.
- (c) Further, this amendment is, in our respectful submission , non-compliant with the personal information protections afforded to all British Columbian's pursuant to the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 ("FIPPA").
- (d) Specifically, the tracking of vehicles in the manner proposed would be tantamount to the unauthorized collection of personal information about drivers contrary to FIPPA.

7. Appendix B – Equipment and Safety

- (a) CDI respectfully submits that it opposes the proposed amendment to Appendix B as this proposed amendment exceeds the jurisdiction of the OBCCTC.
- (b) Specifically, CDI opposes the obligation that trucks owned or leased by any Related Person be identified with a "unique identifier".
- (c) This proposed amendment far exceeds the OBCCTC jurisdiction as it would extend the Commissioner's reach to capture vehicles that are not at all involved in container trucking services requiring access to a marine terminal in the lower mainland



B. Sponsorship agreement

1. Under Schedule 2 – Sponsorship Agreement
 - (a) CDI makes no submission in respect of this proposed change
2. Under Schedule 2 – Sponsorship Agreement (Termination of Sponsorship Agreement)
 - (a) CDI makes no submission in respect of this proposed change
3. Under Schedule 2 – Sponsorship Agreement (Indirectly Employed Operator)
 - (a) CDI makes no submission in respect of this proposed change

C. Terms and conditions of employment and retainer of truckers

1. Under Schedule 6 – Minimum Daily Hours and Call Out
 - (a) CDI respectfully submits that it opposes the proposed amendment to Minimum Daily Hours and Call Out as this proposed amendment exceeds the jurisdiction of the OBCCTC.
 - (b) Specifically, CDI submits that the proposed inclusion of Schedule 6 effectively usurps the role of the Governor in Council as this amendment goes further than the setting of rates contemplated in s. 18(2) of the Act. Rather it imposes and establishes a new condition as contemplated by s, 44(2)(i) of the Act.
 - (c) The power to impose new terms and conditions is specifically granted to the Governor in Council and are to be introduced not through the licence but through the Act and its regulations.

D. Housekeeping

1. Deletion of definitions
 - (a) CDI's position is that all relevant definitions should be included in the license. this includes but is not limited to the definitions of:
 - (i) "Container": the definition of which is essential to the license;
 - (ii) "Container Trucking Services": the definition of which is essential to the license
 - (iii) "Licence Area" which is not otherwise defined in the Act or Regulations, the definition of which is essential to the license;
 - (iv) "Facility", which is not otherwise defined in the Act, the definition of which is essential to the license;



- (b) Including definitions in the license document, as opposed to directing licensees (and the public) to the Act, the VFPA Access Agreement, and regulations is essential to parties, stakeholders, and the public understanding of the terms of the license.

Conclusion

- 1. For the reasons set out above, CDI opposes the proposed changes to the CTS Licence.

Yours truly,



Veronica S. C. Rossos
Providing services on behalf of a Law Corporation
Partner
VSCR/sw

- c. Client, via email

