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February 28, 2024

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

Dar Mr. MacInnes

Thank you for the opportunity to respond to your proposals related to your proposed 2024 license reforms.

BCTA is committed to supporting your office's work ensuring that drivers are paid correctly and on time. We are also committed to supporting your efforts to identify unscrupulous entities in the drayage sector as well as your enforcement efforts related to these parties. Our members understand this takes significant effort and more time than they, or your office, would prefer.

In the past we have discussed the need for a longer licensing period. The current 2-year cycle does little to create stability as TLS licensed companies face the possibility of licenses not being renewed. This is particularly problematic when our members work with financing companies as a two -year license to operate makes it extremely difficult for finance companies to consider any longer-term finance options. As our members begin to assess their ability to purchase new, Zero-Emission Vehicles (ZEVs), this issue is becoming more prominent.

We also note that the 2-year cycle presents enforcement challenges. We are concerned that a previous decision to cancel a license became moot as the license in question had expired. We think it would be fortunate timing if your office was able to conduct an audit, determine any violations, pursue enforcement action of cancellation, and then have the process move through the courts (as it undoubtedly would) within a two-year window. A longer licensing timeline would support your office's enforcement efforts.

As a general observation, we note that the proposed reforms seek to draw clear lines for prohibited conduct. The tension between clarity and discretion is a difficult concept to balance and while we applaud the general approach to clarity, we will draw attention to areas where we see this as problematic in our feedback below.

A general theme that appears in Schedule 2 of the proposed license framework relates to payroll deductions. We believe this is an opportunity to address a long-standing issue, namely that drivers should have fees levied against them for conduct completely within their control, such as reporting early for appointment times. These charges have not been considered as part

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of an authorized deduction scheme; we believe they should be part of the framework for payroll deductions. Similarly, costs related to the damage or removal of non-carrier equipment (such as VFPA provided GPS systems) should be included in authorized payroll deductions.

The proposals are broken into 3 main themes, as well as housekeeping amendments. For ease of reference, we will break down our comments in the same manner.

Off-Dock Enforcement:

- We agree that carriers, as a condition of license, should be prohibited from k**nowingly** cooperating in any manner with any non-licensee. Our members identified examples where this is problematic; High on that list were IEOs. Outside the limited provisions provided in the conditions of license, TLS carriers cannot control the operations of those individuals and therefore should not be held accountable for them. Similarly, when chassis are rented/sublet for other activities (such as cranberry harvest), there is no way for a carrier to control what that entity does with the chassis.

- We understand the premise of referring to the "directing mind," are aware that this is a principle of law, and can support this initiative. We do believe that this concept requires significant outreach and education, specific to drayage, which would be needed to avoid disputes.

- We strongly disagree with the proposal to create "off dock facilities approved by the OBCCTC." While we understand the concept behind the proposal, in our view it is entirely unworkable and outside the commissioner's role. The *Container Trucking Regulation* defines "facility":

  > "...means a location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping, but does not include a marine terminal;"

  This definition is intentionally broad and, on plain reading, encompasses every location where a container may be stationary in the lower mainland. While it is laudable to attempt to identify off-dock facilities that are being used for purposes inconsistent with the *Act* and *Regulation*, the definition would mean that the OBCCTC would be approving tens of thousands of loading docks throughout the lower mainland. The adjudication process would be unworkable.

  In addition, "approved" creates "not approved" facilities. Our members are concerned about what criteria the OBCCTC intends to use to not approve facilities. Would the intent be to accept everything, as a registered database? Or to adopt other standards, such as

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the *Occupational Health and Safety Regulation*? Access / egress per municipal and regional road use? These are areas of enforcement outside the OBCCTC's scope. We believe this proposal is unworkable and outside the scope of our office's role.

If your office intends to proceed on this (what we believe to be) unworkable initiative, we suggest that the term "approved" be changed to "registered." This way the OBCCTC will not attract liability from approving/not approving facilities but would instead gather some level of information.

- While we understand the basis for the proposed requirement for GPS data on untagged trucks, again we are left with practical application questions. As these trucks are not part of the TLS fleet, they will not have access to the VFPA's GPS program. There can be no consistent standard or oversight. What is the OBCCTC's expectation for collection and retention of data? In the absence of a third-party administered system, this requirement will do little (if anything) to dissuade those who would equip their vehicles but not activate the devices for every move. Similarly, nothing would prevent the alteration or deletion of the data. Inconsistent application reporting, and data retention protocols between systems is also problematic.

  Finally, we note that the goal is to create an electronic device that "…records the number of hours of Container Trucking Services and / or Container Trucking Services trips performed. **This is impossible**. There is no device available that can differentiate a CTS vs. not CTS move. This distinction is only possible through analysis of records of moves. The trucks in question may perform CTS work for all, or part, of any given day, week, or month. Any data would need to be broken down and separated, a necessarily manual process. Which negates the entire premise of a "valid" GPS process.

  Again, we understand the premise, but the proposals presented seek to track trucks and chassis as a proxy to determine container moves. There is no electronic system that can do so.

- While we believe and understand the proposed requirement to place a decal on all chassis, similar to our point above with regards to "knowing cooperation," this concept is confounded by realities in the broader industry. Left out of this consideration are short-term rentals which, for the unscrupulous, can move into longer and longer periods. Overall, a decal cannot determine compliance and while we appreciate the expediency that the concept would assist the compliance efforts of the OBCCTC, we believe that such decals will do little more than create noise in the industry.

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Sponsorship Agreements:

- In principle, we agree and support establishment of clearer criteria for cancellation of sponsorship agreements. But the details will be critical. While the amendments to item 17 in the proposed license framework attempts to accomplish a level of codification, all of the provisions proposed in this item are discretionary and therefore really cannot provide clarity.

  We are very concerned about the notation that these provisions will improve the OBCCTC's ability to '...match drivers with work." This is not the role of the OBCCTC. Neither the *Act* or *Regulation* empower the OBCCTC to act as a hiring agent for drivers. This proposal begins to move the OBCCTC into the role of acting as a "hiring hall" for drivers, a concept that exists nowhere in the enabling legislation. While the overall mandate of the office is to ensure stability in the industry, moving into this area under the cloak of "stability" is not contemplated by legislation or regulation.

- Throughout the proposals, it is noted that the carrier must track hours for trip rated drivers. This confuses the methodology of payment created by legislation and regulation. Carriers have run into serious difficulty with unions and drivers operating as trip rated IOs as they indicate they do not, and will not, agree to hourly work schedules. Trip rated IOs have the ability, and value, control of their hourly schedule. The *Regulation* and *Act* both contemplate different methods of compensation. Collective agreements in the sector are consistent with this principle. It is not the role of the OBCCTC to re-write legislation to support a particular model through licensing requirements.

- Regarding the concept of the IEO, BCTA members believe this should be entirely scrapped. The IEO confounds a carrier's ability to manage their (increasingly) strict responsibilities. It creates a level of operator not contemplated by the *Act* and/or *Regulation*. It, and all the proposed changes to accommodate it, should be removed.

  The proposals note that the IEO will be required to produce and maintain records and pay drivers the required rates. However, there is no mechanism for the carrier to ensure this occurs. This places the carrier in an untenable situation, being held accountable for the actions of a party over which they have no control.

  BCTA members are aware that the concept of the IEO was removed in the past, but somehow remains operating in the system. There is no point continuing language that supports a model of operations that undermines responsibility of carriers. Some union agreements have had to be written to overtly prohibit this model.

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The discussion of relief drivers for periods of disability is an issue that is confounded by other elements in the employment, or contractual, relationship between the driver and carrier. Seniority, application of duty to accommodate considerations for non-compensable injuries as well as duty to re-employ obligations for compensable injuries translate to the carrier exist. How can the carrier ensure compliance if they have no control over the hiring of drivers? Similarly, work share agreements restricting total trip counts to individuals are problematic. Hiring of relief drivers is a hiring decision, one that we believe must rest with the carrier responsible for compliance.

The proposal notes that since 2020, the OBCCTC has cancelled sponsorship agreements involving owners of vehicles who do not or no longer operate their vehicle. We believe the OBCCTC should continue this approach and directly advise IEOs that this model is being abolished within the 2024 license cycle. IEOs should be offered the opportunity to enter into standard sponsorship agreement; the IEO model, however, should be discontinued.

The housekeeping changes proposed are straight forward. We do not see any issues with implementation.

Thank you for the opportunity to comment on the proposed changes.

Sincerely,

Dave Earle
President and CEO
BC Trucking Association