July 28, 2025

Canada Drayage Inc.
1375 Kingsway Ave
Port Coquitlam BC V3C 1S2

Canada Drayage Inc. (CTC Decision No. 18/2025) – Decision Notice

Introduction

1. In Canada Drayage Inc. (CTC Decision No. 18/2025) ("Decision"), I found that Canada Drayage Inc. ("CDI") failed to comply with an order issued on November 29, 2024 pursuant to section 9 of the *Container Trucking Act* ("*Act*") ("Order #3")[1] after CDI failed to provide payroll documents ("Required Records") by the extended deadline. I also found CDI was in breach of sections 23 and 24[2] of the *Act* when it failed to pay the regulated rates to drivers who performed container trucking services under its Fastfrate division and deducted a financial off-set from one driver. Based on its failure to provide the Required Records only, I proposed an administrative penalty of $10,000 and a licence suspension of six months, or until such time as CDI complied with Order #3. I also ordered CDI to pay the monies owing for the financial deduction and its failure to pay the regulated rates by no later than August 8, 2025.

2. Consistent with s. 34(2) of the *Act*, CDI was given seven (7) days to provide written response setting out why the proposed penalties should not be imposed.

3. On July 15, 2025, counsel for CDI provided a response.

4. I have considered CDI's response to the Decision and provide the following Decision Notice.

CDI's Response

5. CDI asks that the proposed administrative penalties not be imposed or alternatively be suspended pending the outcome of a reconsideration.

Outside Commissioner's Jurisdiction

6. CDI incorporates its prior submissions as to the Commissioner's jurisdiction and says that to the extent that the Commissioner lacks jurisdiction to issue Order #3 the Commissioner also lacks jurisdiction to

[1] CDI's July 15, 2025 submission refers to "Order #3" as the "2024 Order." For continuity and consistency with the Decision, I have used the term "Order #3."
[2] Section 24 of the *Act* is incorrectly referenced as section 21 at paragraph 48 of the Commissioner's Decision.

penalize CDI for its refusal to comply with Order #3.

Outside Mandatory Time Limit

7. CDI argues that the proposed administrative penalties ought to be "cancelled" because they would be issued outside of the time limit under s. 34(1) of the *Act*, which states that the Commissioner must impose a penalty within six months of becoming aware of the licensee's failure to comply. CDI cites *Aheer Transportation Ltd. v. The British Columbia Container Trucking Commissioner*, 2022 BCSC 1779 ("*Aheer Transportation*") in support of it position that the six months "runs from the date the CTC makes an actual finding of non-compliance under the *Act.*" CDI states the six months began to run on November 29, 2024 – the date Order #3 was issued -- as the Commissioner made a finding that CDI was in breach of its licence on that date and that the Commissioner therefore "had until April 29, 2024, to issue a penalty thereunder in respect of the 2024 Order and the finding therein."

Smart Choice Factors

8. CDI argues that the factors in Smart Choice Transportation Ltd. (CTC Decision No. 2/2016) as applied in the Decision do not support the proposed administrative penalties as the breach was at the "lower end of the spectrum of severity" and did not result in any proven harm to drivers and that any enrichment of CDI is "wholly speculative." It further argues that its failure to comply with Order #3 does not damage the integrity of the Commissioner but rather "protects against the CTC exceeding its jurisdiction." It characterizes its breach as a single instance of non-compliance over 11 years that does not "materially interfere with the interests or rights of drivers or the public."

9. CDI further argues that because the Required Records were "sought based on speculation of a potential breach of the *Act* and not a finding or reasonable suspicion of a breach of the *Act*, the gravity of CDI's refusal to produce the Records must be reduced." CDI adds that the Commissioner does not need the Required Records to determine compliance with the *Act* as it has "broad investigatory power and it has indeed relied on such powers to conduct inconspicuous investigations involving CDI."

10. CDI disagrees that failure to comply with Order #3 is aggravated by the fact it first asked for the audit. Rather, CDI "has simply been working toward a definitive decision on the jurisdiction issue."

11. CDI states that it was aware that the CTC may issue an administrative penalty for failing to provide the Required Records but argues a mitigating factor in this case concerns the CTC's failure to provide "any warning or notice that it was considering issuing a suspension pursuant to section 34(1)(a) of the *Act.*"

12. CDI also argues that the proposed administrative penalty will not deter other licensees because the issue here is the Commissioner's order for records that CDI says are outside his jurisdiction and "where the jurisdiction of the CTC --or any other administrative tribunal – is properly in dispute and being contested by a party it can reasonably be expected that that party will not accede to the contested jurisdiction unless and until it is established and confirmed at law."

13. CDI agrees that where there has been "a wanton disregard for the authority of the CTC or the rights and entitlements of drivers, there may be a compelling basis to demonstrate the consequences of such actions." However, CDI says these are not those circumstances because it has engaged in a "legitimate challenge to the CTC's jurisdiction." CDI warns that "until the CTC's jurisdiction for such orders are resolved" other licensees will "similarly refuse to comply with orders or directions made by the CTC" and will "face greater operational barriers as a result of incurring …penalties. . . potentially imperiling the viability of such business or the security of their drivers."

14. CDI maintains that prior suspensions issued by the Commissioner to compel disclosure of documents are not applicable in this case. CDI states that many of the decisions cited at paragraph 51 of the Decision were the result of "egregious circumstances" where licensees "did not contest the CTC's position on the basis of want of jurisdiction as CDI has in this case." It argues that such a substantial difference negates the need to impose an administrative penalty here. In addition, CDI maintains that the breach "does not pertain to how CDI actually carries out its services" and allowing CDI to continue to operate (rather than suspending its licence) is therefore unnecessary as CDI's continuing to operate "will not perpetuate the conduct at issue." CDI is clear that the penalty "will not have the effect of pressuring CDI to comply with CTC's demands" and that it will not comply with Order #3 "unless and until the CTC's jurisdiction for same is confirmed on judicial review…".

Suspension of Fine and Licence Suspension

15. CDI asks that if the fine and the licence suspension are to be issued, that both be suspended until the outcome of a reconsideration.

16. CDI argues that it will be prejudiced by the imposition of the administrative penalty while any prejudice to the Commissioner would be negligible. CDI states that it will likely lose approximately $1,500,000 in revenue and pay "severance, amongst other things" to drivers who will also be temporarily or permanently laid off.

Consideration of Licensee's Response

17. For the reasons set out below, I am not persuaded by CDI's submissions and have determined that the appropriate administrative penalty is $10,000 and a suspension of CDI's CTS license for six months or until it produces the Required Records, whichever is sooner.

Outside Commissioner's Jurisdiction

18. CDI is a licensee within the meaning of the *Act* and one important condition of its CTS license is to provide certain records, including the Required Records in this case. As a licensee under the *Act,* CDI must also comply with orders of the Commissioner. I set out my conclusions on the Commissioner's

jurisdiction to order the Required Records at paragraphs 32 and 36-38 of the Decision and CDI has not changed my views on this issue. I am not persuaded that the container trucking services in question are necessarily outside of the scope of the *Act* or that Order #3 is outside the Commissioner's jurisdiction. Accordingly, I remain of the view that an administrative penalty can be imposed for refusal to comply with Order #3.

Outside Mandatory Time Limit

19. CDI argues that the six months under section 34(1) began to run on November 29, 2024 – the date Order #3 was issued—because that is the date I found CDI in breach of its licence. I agree that I could have issued a penalty for that breach within six months of November 29, 2024. However, CDI was given another opportunity to share the Requested Records when I issued Order #3. Similar orders have been issued where other licensees have failed to comply with the conditions of their licence, including failing to provide payroll records upon request: see for example *Re: Notice of Order against Gantry Trucking Ltd. and TSD Holding Inc to Comply with the Container Trucking Act and Container Trucking Services License, January 4, 2017.* Section 9 of the *Act* would be less meaningful if the six months did not also run from the date of breach of an order.

20. As set out in the July 8, 2025 Decision, the administrative penalties proposed were based on CDI's breach of section 40 of the *Act*. Order #3 was issued on November 29, 2024 and required CDI to produce the Required Records by the extended deadline of February 27, 2025. CDI had not breached section 40 of the *Act* on November 29, 2024 for the simple reason that CDI was given time to comply with Order #3. CDI provided its response to Order #3 on February 13, 2025 and February 27, 2025. As CDI acknowledges, the six months begins on the date the Commissioner makes an actual finding of non-compliance. CDI's response to Order #3 consisted of two separate and detailed submissions totaling seven pages setting, for the first time, its position that Order #3 was unlawful and raised substantive and procedural issues. It was not until I reviewed and considered the submissions and issued the Decision on July 8, 2025 that I was aware that CDI had failed to comply. On my analysis, then, the Commissioner only becomes aware of a licensee's failure to comply with *Act, Regulation,* or CTS license after reviewing and considering all the reports and submissions and coming to a conclusion that there has been a failure to comply. See AMK Carrier Inc. (CTC Decision No. 03/2020) and *Aheer Transportation.*

21. On another analysis (which I do not accept), the six months began to run when CDI failed to produce the Required Records by the February 13, 2025 (arguably February 27, 2025) deadline. On this analysis, which overlooks the need to assess CDI's submissions as to why it was not required to produce the Required Records, I might be said to have been aware that CDI had failed to comply with Order #3 by the February 13, 2025 (or February 27, 2025) deadline. Under this analysis the penalty must be imposed in August, 2025.

22. Lastly, in *Safeway Trucking Ltd. v Office of the British Columbia Container Trucking Commissioner*,

2023 BCSC 589, the Court preferred the Commissioner's position that the six-month limitation under section 34(1) and must be balanced against other factors. Section 34(1) of the *Act* is, in my opinion, meant more to ensure "that harmful conduct by licensees is addressed promptly once it is detected, in order to protect drivers and discourage renewed labour unrest" and less "to promote administrative diligence on the part of the Commissioner, for the benefit of licensees." This is especially the case where licensees, like CDI, seek extensions to the deadline or advise that they intend to comply and then change their position. Accordingly, even if the penalties in question here were issued outside of the six-month period, which they were not, they would not necessarily be of no effect. Order #3 effectively gave CDI another opportunity to comply with its obligations under the licence; this was intended to benefit, not prejudice, the licensee.

Smart Choice Factors

23. I do not find CDI's reasons for refusing to comply with Order #3 convincing and I do not accept that it is open to CDI to unilaterally act in accordance with its interpretation of the *Act* until such time as the courts determine if CDI is right or wrong. CDI has provided me with no case law that supports such an approach and the idea that an order does not automatically need to be complied with until the outcome of a theoretical judicial review is inconsistent with the express language in the *Act.* Section 40 states: "A person to whom an order under this *Act* applies must comply with the order." Section 39(1)-(2) makes clear that an order stands even when an application for reconsideration has been made unless the Commissioner suspends the order until the outcome of the reconsideration. Section 9(2) of the *Act* also provides that an order is effective immediately unless otherwise provided. There may be valid reasons for the Commissioner to suspend an order or to make an order effective at a future date, but these are questions for the Commissioner under the *Act*. Licensees are not automatically entitled to wait until the courts determine whether a Commissioner's order is valid.

24. A selective adherence to the *Act* as advanced by CDI would undermine the integrity of the container trucking industry and would interfere with the Commissioner's administration of the *Act*. I agree with CDI that other licensees may withhold records pending judicial review but that is not a reason to sanction such withholding. If the Commissioner could not issue administrative penalties, including licence suspensions or cancellations, for failure to comply with an order (whether to produce documents, to compensate drivers who have not been paid the minimum regulated rates, or to otherwise comply with the *Act*, *Regulation* or licence), there would be no mechanism in place to compel compliance and no need for the licensee to pursue a judicial review. This is the reason the Commissioner has the authority to require and review the Required Records based on the Commissioner's mandate under, for example, section 31 of the *Act* -- to "ensure compliance." Licensees are free to challenge any finding at a later point in time.

25. The Commissioner's position on containers and container trucking services has been well publicized for years in bulletins, correspondence and previous decisions. Additionally, in *Simard Westlink Inc. v.*

Office of the BC Container Trucking Commissioner 2023 BCSC 2007) the Court dismissed Simard's stay application and rejected its argument that the Commissioner's application of the *Act* to "domestic moves" was a new interpretation. A small group of licensees, including CDI, have continued to raise "jurisdictional issues" although all of them received the same letter in 2020 from Commissioner Crawford that CDI received as described in paragraph 37 of the Decision. The majority of licensees, however, pay the regulated rates as required under the *Act* when moving containers to and from railyards.

26. I am not convinced that the "gravity of CDI's refusal" is mitigated because there was no finding or reasonable suspicion of a breach of the *Act*. There was no finding on the "railway division" work because CDI's refusal to comply, first with the terms of its licence and then with Order #3, has prevented the Commissioner from determining whether CDI is compliant with the *Act*; this is set out in paragraphs 36 and 42 of the Decision. CDI's refusal to comply is itself serious.

27. Although CDI may wish to argue that it is compliant with the *Act* based on the evidence already provided and assert that review of the Required Records is not necessary, the *Act* requires that the Commissioner "ensure compliance," and this is the reason for section 25 of the *Act* and Appendix D of the licence and the reason for Order #3.

28. The importance of maintaining – and providing – payroll records in order for the Commissioner to carry out its mandate was stressed in Olympia Transportation Ltd. (CTC Decision No. 02/2016):

> The requirement to keep complete, accurate and up-to-date records is a fundamentally important obligation flowing from the legislation and the Container Trucking Services Licence (the "licence"). The maintenance of complete, accurate and up-to-date records by licensees is absolutely essential to the OBCCTC's fulfillment of its rate compliance mandate and its ability to properly perform audits in a timely and fulsome way. Failure to keep proper records…will not be tolerated, and will be regarded as a serious violation of licensees' obligations under the legislation and their licence.

29. I am unconvinced by CDI's suggestion that there are more appropriate avenues to determine compliance. The audit process involves a review of the licensee's payroll and compensation records in determining compliance, and the importance of audits, and the need for strong penalties, was emphasized in the Vince Ready and Corrin Bell Recommendation Report that led to the creation of the *Act:*

> We are of the view that the audit process and dispute resolution process should be part of the proposed Agency and captured by Regulation. The audit system should continue to address the systemic issues in the industry. As such, we strongly recommend that all trucking companies that hold a TLS license shall be subject to random and specific audits. We also recommend that the remedies available to the auditors to recommend be augmented to allow for financial penalties to

> be levied against trucking companies for non-compliance in addition to license suspensions/terminations[3]
>
> (emphasis added)

30. I infer that CDI's reference to "inconspicuous" investigations include the investigation reports they received on January 22, 2025 and June 11, 2025 concerning the use of untagged trucks moving containers in the Lower Mainland. While those investigations are ongoing, I note that on March 22, 2025, CDI has to date also refused to provide the investigator with the payroll information requested. Regardless of the approach taken by the Commissioner, the Commissioner must be able to review a licensee's records.

31. I do not find CDI's argument that it understood the term "administrative penalty" in Order #3 as referring only to an administrative fine. Section 34 of the *Act* deals with "penalties relating to licences" and includes suspensions of up to six months as well as licence cancellations. If CDI inferred that it would only be subject to a financial penalty for refusing to comply with Order #3, the notice provided in the Commissioner's Decision pursuant to section 34 of the *Act* should have dispelled them of that notion.

32. I am not persuaded that the proposed administrative penalties should not be imposed because of the claimed economic effects on CDI and its drivers. CDI currently retains approximately 11 IOs which account for approximately 1.3% of the IOs on the IO List. When IOs are unable to work for a licensee because a truck tag has been removed or suspended or for other reasons, the Commissioner will work to reassign the IO to another licensee. In other words, each of the 11 IOs can likely work for another licensee. As for the economic costs that may be suffered by CDI, that decision rests solely with CDI, and whether its licence is suspended is entirely within its control.

33. Additionally, CDI has not challenged my finding at paragraph 39 that it would not be prejudiced by simply producing the Required Records and I note that the licensee in *Aheer Transportation* (cited by CDI for a different purpose) challenged the application of the *Act* to similar container movements as those in question here but did not refuse to provide records. I further note that licensees involved in similar challenges to the scope of the *Act* did not refuse to provide records: see Simard Westlink Inc. (CTC Decision No. 16/2023), HAP Enterprises Ltd. (CTC Decision No. 7/2024) and KD Truckline Ltd. (CTC Decision No. 11/2024).

34. I am not persuaded that the proposed penalties should not be imposed because some of the other cases cited at paragraph 51 of the Decision involved more egregious behaviour. It would not be fair to say that CDI's refusal is not egregious when it withholds the very records I require to determine the extent to which it may be underpaying drivers. The general theme in most of those decisions was that

[3] Vince Ready and Corrin Bell, Recommendation Report – British Columbia Lower Mainland Ports, section 6 (e) E. Dispute Resolution and Audit Processes

each licensee failed to comply with an order and the suspensions were imposed to compel compliance. As stated above, there is no other mechanism in place to ensure licensees adhere to orders and I will impose the suspension, as well as the fine, for the reasons set out above and in the Decision.

35. As for CDI's assertion that an administrative penalty – particularly the suspension – will not induce compliance with Order #3, time will tell if it remains steadfast in this. However, I cannot decide against the proposed licence suspension simply because CDI asserts that it is determined to be intransigent and it will not produce the records regardless. Appeasing a self-declared ungovernable licensee by not imposing an administrative penalty simply because it says it will still not comply would not be consistent with the purposes of the *Act*. Nor would it be fair to other licensees.

Suspension of Fine and Licence Suspension

36. CDI argues that it will be prejudiced by the imposition of the suspension while any prejudice to the Commissioner would be negligible. However, it is not the prejudice to the Commissioner that must be considered: it is the prejudice faced by the drivers who are meant to be protected by the beneficial legislation. I addressed the prejudice that CDI's drivers may face at paragraphs 52 and 53 of the Decision.

37. Section 39(2) of the *Act* allows the Commissioner, upon request, to suspend an order under reconsideration. As there is no reconsideration before me, CDI's request is premature. The *Act* does not contemplate stays at this stage.

Conclusion

38. I am not persuaded to reduce or refrain from imposing the proposed administrative penalties. Having carefully considered CDI's submissions, and for the reasons set out here and in the Commissioner's Decision, I order CDI to pay an administrative fine of $10,000.00. I also order CDI's CTS license to be suspended effective 12:01am on July 31, 2025 for a period of six months or until it complies with Order #3, whichever is sooner.

39. Section 35(2) of the *Act* requires this fine to be paid within 30 days of the issuance of this Decision Notice.

40. CDI may request a reconsideration by filing a Notice of Reconsideration with the Commissioner not more than 30 days after its 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.

41. Despite the filing of a Notice of Reconsideration, the above orders remain in effect until the reconsideration application is determined.

42. This Decision Notice along with the Commissioner's Decision will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 28th day of July 2025.

Glen MacInnes
Commissioner