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NIOSH Truck Study:

I read with interest the study that you will be conducting. In 2005-2006 we conducted an extensive study on Canadian truck drivers at truck stops as well as interviews of carriers. Though the issues were on labour standards, some of the methodology and findings may be of interest to you and therefore I attached the detailed executive summary for your use.

Sincerely

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Labour Standard Issues in the Interprovincial Canadian Trucking Industry

Executive Report Summary

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1. The Federal Labour Standards Review

The Federal Labour Standards Commission is to review Part III of the Canada Labour Code (CLC) and submit recommendations for legislative and non legislative options to the Minister. Part III pertains to employees of employers or enterprises in the Federal jurisdiction. It establishes minimum standards of employment. The underlying rationale for the commission is that Part III may be out of date since conditions in 1965 have changed. Part III must be relevant to the 21st century workplace which is global and technology enabled.

2. The Rationale for a Trucking Sector Study

Many background studies have been commissioned to summarize and provide a clear understanding of issues that cross industry sectors. These studies have looked at such issues as the impact of working time on workers' health, the effectiveness of wage protection and recovery provisions of Part III, the effectiveness of dismissal procedures provided by Part III and types of workers in need of labour standards protection. The commissioning of a study on the trucking sector is recognition of the significance of the trucking sector as an industry under Federal labour jurisdiction and the unique problems that it may face compared to other sectors.

3. Objectives and Scope of Trucking Sector Study

The study seeks to help the Commission understand the relevant aspects of the industry in order to make a better informed decision about how alternative paths of the CLC will affect the industry and its employees. The focus is on long distance, over the road truck drivers (versus local drivers and non driver personnel) driving for commercial carriers under Federal jurisdiction. This includes drivers that are employed by driver leasing companies or owner operators. Owner operators (OO), though not currently protected by the Canada Labour Code are studied as the subject of sub-contract employees is a substantive issue identified by the Commission.

4. Study Methodology

The study combined an extensive literature review with Stakeholder Interviews and a Nationwide Driver Survey.

- Ninety-five persons were interviewed in 9 focus group field interviews, 58 individual company field interviews and 4 telephone interviews. Stakeholders interviewed included carriers, trucking associations, unions, owner operators, Labor Affairs Officers, driver agencies, and journalists. Carriers were chosen to represent different sectors of the industry.
- A nationwide driver survey successfully interviewed 449 drivers at 15 truck stops in 7 provinces. Representation was 280 employee drivers, 12 agency drivers, 157 owner operators employed by 391 for-hire carriers and 55 private carriers. Comparison of the demographics of the driver survey with a benchmark Statistics Canada profile of for-hire truck drivers validates the aggregate representativeness of the driver survey.

5. Relevant Industry Characteristics of For-Hire Trucking in Canada

The trucking industry is quite heterogeneous and is comprised of operators in different sectors differentiated by legal type (for-hire versus private), operating jurisdiction (intra-provincial versus inter-provincial), length of haul (local versus highway, short versus long haul), shipment type (LTL versus TL) and type of freight hauled. Important features of the For-Hire trucking sector industry include:

- Interprovincial for-hire carriers account for the majority of the revenue and physical output of the for-hire trucking industry.
- More than a third of the for-hire fleet is involved in movements to and from the U.S. which require additional driver qualifications.
- Long distance or long haul movement by truck requires different operating strategies than short distance and local movement by truck. Longer hauls require drivers to be away from home for one or more nights and present equipment utilization challenges.
- LTL operations require a network of line haul, terminal and pickup and delivery systems while TL operations simply require the line haul system. This leads to different asset requirements, scheduling strategies, and competitive structures in each segment.
- The TL sector is highly fragmented with ease of entry and many smaller firms. The LTL sector, while still highly competitive, is more concentrated with higher thresholds to entry and larger firms.
- The category of freight that is most hauled in Canada is General Freight which uses general purpose dry vans. Other categories of freight may require specialized equipment such as tankers, temperature control units or flat decks.
- Firm sizes can vary from 1 and 2 truck operators to very large fleets in the thousands. The number of for-hire carriers with less than 1 million in annual revenue is 5,700 out of about 9,600 carriers.
- About 40 percent of truck driver employees work for carriers with less than 20 employees.

- There are approximately 35,100 owner operators in 2003 with average revenues under \$200,000 a year.
- The market demand, competitive environment and operating conditions can vary in different areas of the country so that the appropriate equipment types, operating strategies and human resource policies may vary geographically as well as across these segments.

6. Employment in the Canadian Trucking Industry

The trucking industry in Canada is an integral part of the Canadian economy, employing over 320,000 full-time workers, of which 271,000 were truck drivers in 2004. Important characteristics of the truck drivers in this industry include:

- 61 percent of these drivers work for for-hire trucking companies as opposed to 39 percent for private trucking.
- 79 percent of truck drivers are employee drivers, more so with private fleets (97%), less so with for-hire carriers (67%).
- Agency drivers are a small (5%) but growing component of the truck driver labour force.
- The majority of for-hire drivers whether company drivers or owner operators or agency drivers, participate in the in the long-distance movement of general merchandise in full truckload.
- Part time employment in truck driving is 3.5 percent overall and 3 percent in for-hire trucking.
- Only 20 percent of for-hire drivers are unionized, less than for private trucking (31.6%).
- It is estimated that between 83,462 and 97,929 for-hire drivers are under the jurisdiction of the Federal Labour Code.

7. Government Regulation of Trucking

Deregulation of entry controls over the trucking industry resulted in a significant restructuring of the industry that, because of the few natural barriers to entry, is characterized by the existence of many very small carriers participating in the market, along with a relatively small number of medium and large carriers.

Most of the important regulations affecting trucking have a safety basis. The National Safety Code, the Dangerous Goods Act, the Drug and Alcohol program applicable to drivers going into the U.S., the border security enhancements and the size and weight restrictions are all related to safety. Hours of service regulations pertaining to the trucking industry are meant to promote highway safety. The safety related regulations have not only become more complex and much broader in scope as they have grown to replace the old economic regulations that existed previously. Successful carriers have also come to recognize the financial benefits of good safety practices and regulatory compliance through reduced accident rates, lower driver turnover and improved customer relations. At the same time non-compliance with safety regulations should result in loss of operating rights just as non-compliance with the economic regulations at one time could result in the loss of operating licenses.

8. Trucking Industry Trends

Trucking companies have to respond to and meet changes in its regulatory, operating and market environments. These changes have produced challenges that impact the behavior of trucking firms and their drivers. Significant industry trends and their impact include:

- **Trade Liberalization, North-South Trade and Deregulation**

North American free trade the increased flow of goods across the borders connecting Canada, the U.S. and Mexico. Cross border transportation market is now a very important segment of Canadian trucking industry and will likely remain that way even as Canada increases its trade with Asia. The majority of growth in the Canadian trucking industry has been on north-south routes rather than east-west such that nearly two thirds of Canadian for-hire carriers participate in cross-border movement. Thus Canadian for-hire trucking must meet the challenges of crossing borders for the foreseeable future. This includes regulatory compliance burdens that are not required or not as stringent on domestic Canadian activity.

- **Border Security and Clearance**

Border clearance has always been an added cost and barrier to transportation between Canada and the U.S. Up to 9/11 the objectives at the borders were primarily customs related but since 9/11 procedures at the border have increased and become more stringent with respect to security and the new objectives are focused more on increased scrutiny of driver qualifications and more intensive and more frequent inspections. New customs and security programs include the Customs-Trade Partnership against Terrorism, Free and Secure Trade program, and the Automated Commercial Environment. In the future, driver credentialing and biometric identification will be required.

- **Hours of Service**

Although the exact estimate may vary, all sources indicate that truck drivers work long work weeks and that a significant number work longer than those permitted by Hours of Service regulations. This is particularly true for long distance drivers.

- **Driver Shortage**

The shortage of qualified drivers is one of the top challenges confronting the trucking industry. The truck driver shortage is not a recent phenomenon, nor one that is expected to abate in the near future. The driver shortage situation is a major constraining factor on industry productivity and is caused by: poor compensation levels, poor working conditions and the quality of life for drivers, and low attraction to the driver occupation for young people and potential new entrants. Demographic trends, particularly the aging of the driver population contributes to the driver shortage.

Driver turnover is closely related to the driver shortage. Since demand exceeds the supply of qualified drivers, it is easy for a driver to terminate his/her employment and seek employment elsewhere. If turnover remains high for a trucking carrier, they face major expenses related to recruiting, training, and opportunity costs arising from not having enough drivers to respond to additional business.

9. Effectiveness of the Canada Labour Code - The Employee Perspective

Complaints in the Road Transport line of business are by far the most significant source of complaints under the federal jurisdiction. However there has been a downward trend in complaints in this sector while the trend has generally been increasing in other business lines. The majority of the complaints (82.3%) are handled individually with unjust dismissals representing almost 16 percent of the complaints. The latter appear to be handled relatively promptly with 76 percent of the assigned cases settled during the fiscal year. The violation percentage is estimated to be around 2.3 to 2.7 percent which would seem to be small but no benchmarks were found to judge whether this level is too high or not low enough. An important factor to consider is whether the complaints that are filed actually reflect the degree to which labour standard problems exist in the industry.

The Driver Survey indicates that two thirds of the driver complaints never reach the CLC process. The reasons and some recommendations are:

- Employer intimidation plays a small role though likely more so in very small carriers. An explicit regulation that prohibits the disclosure of complaint activity in a driver's employment record could be appropriate.
- Lack of awareness and basic knowledge of the process of filing a complaint plays a small role and is again more likely with drivers working for small carriers. Requiring carriers to inform its employees of their rights under the CLC with simple information sheets or posters would seem to be an effective method to raise awareness. Supporting inclusion of more detailed knowledge of the CLC in truck driving schools would appear to be a cost effective means for more detailed training in this area to those employees who need it the most, new employees being the most vulnerable.
- The time and effort required to file complaints figures into the driver's calculation of the benefit cost of filing a complaint. In an environment where it is easier to take on new employment than it is to complain about working conditions or standards at the existing employer, many drivers will choose the path of least resistance. Hence the cost benefit of simply increasing resources allocated to CLC enforcement activities is unclear for the trucking sector.
- The probability of collecting on the judgment is also a consideration in the driver's cost benefit calculation. Drivers who are employed by carriers which can drift in and out of the industry by going bankrupt or changing business addresses have a more difficult time in collecting on their judgments in a reasonable time, if ever.

Realistically, no driver is going to be an expert on CLC complaint procedures and would prefer not having to go through any complaint process. Long distance drivers, being on the road for long periods, may not have easy access to Early Resolution Officers to file or explore whether they should file a formal complaint. In addition to the suggestions made above, an operational

alternative that could be considered is to provide a toll free help line for drivers (and employers) to gain access to a knowledgeable specialist. This could be Early Resolution Officers, at any regional office.

10. Effectiveness of Current CLC Institutions for Employers Magnitude of CLC Activity

The most frequent violations in the trucking line of business are Payment of Wages, Annual Vacations, Unjust Dismissal, Individual Termination, General Holiday and Administration and General (which includes deductions from pay) and Severance Pay. The majority of the violations and complaints are payment related issues and involve the non payment or mis-payment of amounts owed to employees. These violation areas account for 2,221 of the 3,323 violations or 67 percent. According to many of the carrier stakeholders and LAO's, most of these payments related complaints arise at termination of employment. This suggests a relationship between the level of driver turnover in the industry and the level of complaints from drivers. There has been a seller's market in driver demand especially for long distance drivers. This might cause more drivers with complaints to look for employment with another carrier instead of pursuing the complaint.

Inherent Difficulty in Applying Traditional Manufacturing Model

Generally speaking, carriers do not have significant problems with existing CLC standards. Most employers meet or exceed Labour Code requirements such as minimum wages, number of statutory holidays and the Code does not conflict with provincial or human rights legislation.

There is, however, an inherent difficulty in interpreting and applying the CLC based on a traditional manufacturing model to the spatially dispersed trucking industry. The traditional factory model confines workers to a site where productivity is controlled by management and minimizes the impact of opportunism and adverse behaviour on the part of the employees. This assures a close relationship between hours worked and output (productivity) and allows the use of simple pay schemes based on time. In industries where such control is lacking, performance based and piece rate systems have been developed. Since transportation output is based on distance, naturally performance based payment schemes have been developed. The tendency is for hourly wages to be paid for urban, city and short distance trucking and mileage rates to be paid for long distance trucking.

Hours of Work and Overtime

Hours of Work provisions are modified by the Motor Vehicle Operators Hours of Work Regulation under the Motor Vehicle Transport Act. Those who drive beyond the established hours are eligible for overtime pay.

Hours of Work - City versus Highway Driving

The definition of city and highway driver is important to carriers operating simultaneously in intercity and city routes because it determines the thresholds for calculating overtime. Drivers

complain that carriers use low threshold definitions to get more work out of the drivers with less pay.

Under the Hours of Work provisions of the CLC, a "city motor vehicle operator" is a driver who travels exclusively within a 10 mile radius of his/her home terminal or, if not otherwise defined within a union agreement, a driver "is considered to be a city motor vehicle operator according to the prevailing industry practice in the geographical area". The 10 mile restriction that defines a city driver is not typically used therefore the operative definition of a city driver relates to what is industry practice. There is a perceived need among some carriers that the definition and the procedures for defining industry practice ought to be modified as defining city driving is a major area of difficulty for employers and employees. Even under Union Collective Agreements, there appears to be no consensus on what constitutes "City Driving" or "Highway Driving" although it appears as though in most cases that mileage work is often associated with highway driving and hourly work with city driving. If what constitutes city versus highway driving is unique to the circumstances of the specific carrier, is there any relevance to the concept of prevailing practice?

It does not appear that the definition of "city driver" can be accomplished by simply establishing a particular distance radius or a geographical region. This type of definition is either unreasonable or too difficult to define given the different practices in the industry in different parts of the country. Indeed there have even been conflicting interpretations provided by Labour Affairs Officers. Consideration should therefore be given to defining a local driver by some other means or through a combination of different criteria.

Given the nature of the industry and the diverse types of operations that can be impacted by the definition and the important consequences for worker pay that results, the direction should be to provide for a broader yet a more easily interpreted definition of city driver, rather than one that is incapable of providing clear direction as is currently the case. Perhaps there is merit to eliminating the distinction altogether and apply the same rules irrespective of the area of operation or type of driver or enable carriers to simply pay wages that properly reflect the supply and demand for labour for the type of work to be done.

Payment of Wages

Issues relating to payment of wages and unauthorized deductions are the largest category of complaint by drivers under the Canada Labour Code. The driver survey confirmed that there is a high number of complaints over payment of wages. A likely reason is that employees working as truck drivers are paid in a variety of ways depending on the nature of their employers operations. Pay schemes that do not fit into traditional models have resulted in difficulties for employees trying to understand their compensation packages and for employers in determining rates of pay in order to arrive at pay related benefits such as holiday, vacation and overtime pay. Deducting money from an employee's wages is also a common feature in the trucking industry as the employer will take money from drivers as reimbursement for legitimate employee related expenses and advances.

It is difficult for existing legislation to accommodate industry specific pay programs such as those common in the trucking industry that do not follow the typical industrial pay models from which other workplace practices and legislative requirements flow. Current legislation also does not readily contemplate employers making non-statutory deductions from workers pay. These circumstances argue in favour of a particular legislative facility or accommodation to enable workers and employers in the trucking industry to arrive at compensation arrangements which best meet the needs of both parties for fair and comprehensive understanding on pay without compromising worker rights or protection. Payment practices adopted by carriers will remain complicated as long as they operate in an environment where the carrier and its drivers encounter more exceptions they can anticipate with regularity and make provision for. This becomes a CLC issue when these practices result in a complaint that the parties can't resolve internally and a CLC staffing issue if the LAO is unable to understand or interpret the wage contract clearly.

The driver survey provides further validation of this position. In every category of complaints that involved the calculation of wages or time worked, the drivers paid by the hour always had a lower complaint rate than the drivers paid by distance or trip or percent of gross. These observations support the Canadian Trucking Association (CTA) suggestions for a separate piece of legislation that would create workable rules to address these industry specific practices and should be seriously considered though no judgment is made on the efficacy of their recommendations. The recommendation to develop workable rules on payment of wages could potentially impact complaints under annual vacations, general holidays and hours of work as well as payment of wages, all of which have accounted for a significant percent of the CLC complaints filed in recent years.

Unauthorized Deductions

It is not uncommon in the trucking industry for carriers to deduct money from an employee's pay cheque to recover legitimate employee related expenses for such things as reimbursement for personal expenses, deposits against the issuance of company owned equipment and recovery of driver responsible fines and penalties. Such deductions are made because the drivers working conditions are such that more responsibility is placed on drivers to operate on their own than is the case in other industries. These industry payment practices do not easily fit into current CLC regulations.

Carriers feel that that the CLC needs to provide for flexibility and allow alternatives to the requirement that drivers provide written authorization before providing a pay advance. Strict observation of the specific authorization requirement can result in a driver being denied the ability to obtain an advance while he is on the road in order to pay for an unexpected personal expense, for example.

Many complaints relating to unauthorized deductions occur when the driver is terminating his/her employment with the carrier and they consider the deductions that have been made from their pay are not justified. Industry stakeholders say that an option for addressing these compliance difficulties would be to allow greater freedom of contract between the employee driver and the company.

Unpaid work

It is not clear where the issue of unpaid wages lies in the CLC but it is clearly an issue with drivers and owner operators alike that are paid on other than hourly pay schemes. This problem has long been publicized in the industry driver magazines. Open ended remarks from the driver survey and submissions to the Commission identify numerous non driving duties such as fuelling, truck safety inspections, paper work, processing and waiting time at border crossings and intermodal terminals, loading and unloading time, and inspections at weight scales as examples of unpaid work. Since these are considered on duty time, drivers argue that they should be specifically paid for. Drivers say that when the total time that they are on duty is counted, their hourly wage is relatively low. Some carriers respond that such costs are factored into mileage rates which in turn are based on competitive conditions while other carriers separately provide compensation for such activities. The driver shortage has forced some carriers to revisit their pay packages and include explicit payments for various events and duties. Stakeholders all agree that provisions for paying for items which were "previously" included in the mileage rate are increasing as carriers seek to be the employer of choice in the current environment of driver shortages.

As with the city versus driver issue, employees agree to work for of a carrier with certain expectations over the amount of work and the type of work they would have to do and for how much. Perhaps, the solution is a better educated employee who can properly evaluate alternative offers of employment. Such education might be part of the training provided in Truck Driver Education programs that train students with Federal support grants. Still, a prospective employee cannot evaluate a contract that is vague or non existent (typically oral). Thus a second recommendation is to require a written employment contract that has a section that explicitly states the terms of compensation package and a third recommendation is that Labour Canada develops mechanisms to require all carriers provide their employee's with a copy of the written contract of employment with a specific compensation section.

Minimum Wages

Several submissions to the Commission have recommended that the minimum wage be raised. Pay rates in the trucking industry are generally above minimum wage levels set by Canadian provinces. The average for hire truck driver earned \$829 per week and even if they worked 70 hours to earn that, the hourly wage would be \$11.84. The reality is that truck drivers who drive that many hours actually earn \$242 a week more, so that their hourly wage is above \$15 if they work 70 hours. Of course, actual wages are above and below this average. There are two circumstances where the minimum issue wage appears to be important for carriers who normally pay above minimum wages. The minimum wage may be used as the hourly equivalent for the calculation of overtime and similar payments or the minimum wage may be used as a rate of pay during the training period in which the driver is not qualified to drive alone. Employers have justified paying low wages or no wages by saying the initial work of new drivers is training and that the new driver is not producing any value. In most cases new drivers are paired up with

experienced drivers so that they can train them on the job under supervision. The payment of no wages or wages below the minimum wage is clearly a violation of Section 178 which requires payment of at least the minimum wage.

It appears that any proposal to increase the minimum wage or include minimum wage provisions in Federal legislation would have little impact on the established larger carriers who pay wages far exceeding minimum wage. There may be some (unverified) impact on smaller carriers who may be operating on the margin and paying wages close to or lower than the minimum wage but there would be an issue of the ability to enforce any increased standard across the smaller carrier population. This could benefit the carriers who pay premium wages by helping level the playing field with respect to the cost of drivers. As noted by the Canadian Auto Workers "Responsible employers would welcome a wage floor which stops them from being undercut by more unscrupulous competitors".

General and Statutory holidays

All carriers agreed that statutory holidays in the Canada Labour Code posed an administrative problem for them and some other stakeholders said that many of the practices used by carriers to calculate holiday pay was illegal. This is confirmed by both CLC violation statistics and the Driver Survey. In the current calculation system, employers must go back 20 days to figure out proper amount of holiday pay payable. Adding to this difficulty is the numerous possible methods of compensation a driver can receive and employees within the same company may receive different methods of compensation. One carrier commented that most employers don't have the time and resources to make detailed calculations using the methodology HRDC specifies.

Employers have suggested coming up with an averaging method that would be simple to calculate and that was fair to everyone, but this is discouraged by LAO's. Even LAO's confirmed that employers had difficulties filing complaints. Both commented about the complicated wage rates and their effect on calculation of holiday pay. LAO's themselves find it complicated, cumbersome and confusing to calculate correct holiday pay. Having drivers contesting holiday pay can become costly for employers. Many carriers have commented that they tend to overpay their holiday pay to avoid the time associated with its calculation and to avoid problems and complaints. For example, some carriers choose to pay for 10 or 11 holidays instead of the 9 Federal statutory holidays.

The precedent of paying holiday pay on the basis of a particular rate or amount rather than as a product of a formula based on previous days worked appears to have been established and is accepted at least in the unionized sector of the trucking industry. Carriers in the non-union sector have also accepted this method as a means of providing for a quick and easily understood payment system, even though this practice is clearly contrary to the regulation. Changing the regulations to allow this form of holiday pay would appear to be a viable alternative to the present method of calculating holiday pay. The challenge is determining what the appropriate amount of holiday pay should be and the guidelines for such a determination.

Vacation Pay

While some vacation pay issues are the result of the difficulty in calculating wages, LAO field interviews indicate that many annual vacation violations come as a result of terminations and employers not paying the final wages to an employee. As noted below with regards to severance pay, carriers have various motivations for such action but this practice is clearly a violation of the CLC.

Individual Termination

Individual Termination violations are a reasonably significant percentage of total violations and complaints and this is validated by the driver survey. Remarks from the driver survey, LAO and stakeholder interviews indicate one deficiency in this labour standard is the practice to dismiss employee drivers prior to their qualification for termination and severance benefits. Carrier stakeholders interviewed all indicate that this only occurs when the carrier's evaluation of the employee justifies termination and unwarranted dismissals are not economic in an environment of driver shortages and possible CLC complaints or litigation.

Carriers feel the existing provisions are too much in favour of employees, referring to the 2 week notification required by the carrier for termination but no notification required on the part of the employee. The field interviews found that some employers are hesitant to give two weeks notice to drivers who will continue to control thousands of dollars worth of equipment and goods. Employers are wary that something could happen to their equipment so they do not give notice, resulting in violations of the CLC. While one can have sympathy for the carrier's situation, not giving proper notice of termination for these and similar reasons are clearly a violation of the CLC.

Another source of violations of the termination regulation within the CLC is argument between the carrier and the employee over whether a dismissal is for just cause or an unjust dismissal (see below).

Severance Pay

Employees are entitled to severance pay once they have completed twelve consecutive months of continuous employment. Frequent violations of the severance pay provision seems to indicate that many employers are not paying proper severance pay and the reasons for this are similar to those for individual termination as many payments of wages complaints occur at termination of employment. The employer may be holding the severance payment to cover potential costs, liabilities or damages incurred by the driver and not reported. The carrier may believe that the termination of employment fell under the just cause provision in which case severance pay is not payable.

Unjust dismissal

Almost 18.6 percent of the for-hire employee drivers in the survey responded that they have had a problem or complaint with Unjust Dismissal. In 2002-2003 there were 494 unjust dismissal complaints filed under the CLC. Unjust dismissal involves mediation by the LAO and subsequently, more often than not, adjudication. Carriers indicate that employees see bringing

the complaint all the way to adjudication is a no lose option if they do not receive satisfaction in mediation with the assistance of the LAO. Carriers indicate that adjudication can be expensive in terms of lost productivity of management that would be required to be at the hearings. The most significant concern over unjust dismissal is that the carriers feel that the judgment and prerogative of carrier management to ensure safety in its fleet operations is compromised by unjust dismissal determinations against the carrier. The safety record is of paramount importance to carriers, especially those with large fleets. Carriers claim that terminations of employment well supported by evidence have been overturned in adjudication. It is claimed that it is difficult to develop a record of progressive discipline when the only criteria for a progressive discipline action is to have an accident rather than the demonstration of other behavioural predictors of accident. These carrier assertions seem plausible enough for further investigation.

Imbalanced Treatment of Employers

Carriers feel that there is an imbalance in treatment of employer versus employee in the administration of certain aspects of the CLC. They feel there is no symmetry in requiring employers to provide 2 weeks notice of termination when the employee can resign instantly with cost consequences to the carrier. Some carriers also feel the time limit on an employee, often a former employee, to file a claim is unfair and an administrative burden on carriers, especially small ones who do not have extensive filing systems.

Lack of Trucking Industry Knowledge

A number of carriers have expressed disappointment in the lack of knowledge of the trucking sector by LAO's. Whether this is justified or not, a number of simple practices could improve the likelihood of having a knowledgeable LAO. These include allowing a LAO in each region to specialize as much as possible on trucking cases, assigning the same employers to same LAO's when possible to leverage their past experience with the company or developing a centralized expertise centre where trucking related knowledge is available either in the region or nationwide. The degree to which such practices and others are already employed is not known but the perception is that knowledge of the industry and its practices is not well understood by the LAO's. Too many LAO's are applying the CLC on a one size fits all basis, a framework that does not work in trucking

Inconsistent Application of CLC standards

Inconsistent Application of CLC standards is a problem for nation-wide carriers who have employees domiciled in multiple provinces. These include what appear to the carriers to be different interpretations of the city versus highway criteria, different enforcement or interpretation of the proper methods for calculating wages and hours for general holidays or vacation pay in different regions, and inconsistent rulings on unjust dismissal.

11. Changing the Canada Labour Code - Work Life Balance

The nature of the industry is such that it is not possible to run an extra-provincial trucking operation without requiring employee drivers to spend time away from home base and work long hours which in other sectors would be considered overtime. A large percentage of drivers work

more than 40 hours per week and in the long distance sector, more than a week away from home on the typical trip. Drivers generally recognize that this is a required part of their job and most understand that carriers, especially larger employers are doing what they can to increase home time. Carriers are seeking to maximize productivity and meet customer requirements with the capacity of the work force that it holds.

Time away from home is the primary work place environment issue for long distance truck drivers. Providing increased or more flexible leave for non work activities such as maternity leave or elder care is insignificant relative to improving time away from home. Driver satisfaction and level of problems at home increase as the number of hours in the work week and the days away from home for a typical trip increase. However, driver expectations of reasonableness of trip times are also important. Driver evaluation of the reasonableness of trip times away from home reflects the driver's evaluation of the economic and operational challenges that their employers face. In part this is conditioned by the higher wages that may be earned by travelling these longer trips. The difference between typical days away from home and what is considered reasonable by the driver has the most consistent relationship with driver satisfaction and problems at home. This helps to explain why there are drivers who are satisfied with their occupation across all length trips. None the less, the trucking industry realizes that demographic changes in the existing driver work force and in the potential driver work force are reducing the quantity of drivers who are satisfied with driving long distances and long trips.

Individual carriers have responded with a variety of strategies ranging from doing nothing, to increasing compensation, being more flexible, matching drivers with trips, shifting the type of freight or origins and destinations that they are transporting for, and changing operations. Being more flexible and getting time off when the driver has a need to do so are the most frequently mentioned solutions to improving the workplace environment of long distance truckers, voiced by both drivers and carrier stakeholders. However, flexibility is not a standard that can easily be legislated with any precision. Specific guidelines as to when such flexibility is applicable and how it should be applied are likely to be in the domain of the employer and either the employees as a group or even individual employees.

Comments from drivers and carriers suggest that the degree of work-life conflict may depend on factors such as type of employee or industry sector. Carriers have said that the long hours are a part of the job, and that the ability to accommodate every driver is often difficult for most small carriers. Both drivers and employers acknowledge that work-life balance is an important issue in the industry and all of the carriers interviewed acknowledged that they try to be as accommodating as possible within their service obligations to provide drivers with the amount of work time they want, whether it is for longer or shorter times away from home. This is critical in an environment of undersupply of qualified drivers. What is evident is that the solutions are different for different carriers. Each carrier assesses the return on utilizing different strategies and approaches and there does not appear to be any one solution that fits all situations.

It appears that the opportunity for making appropriate work/life decisions is best achieved by the nature and size of the trucking operation and best resolved through good employer/employee

relationships.

12. Changing the Canada Labour Code – Education, Workplace Productivity and Supply of Labour

Education and training in the trucking industry is focused on job specific skills required by the carriers. We did identify one carrier which encouraged self development and funded company approved programs for work related development. Certain Teamsters contracts require the carriers to contribute to funds which may be used by members of the local to improve job skills. However none of this training support really fits the definition of "Lifelong Learning". As stated by HRDC there is no universal definition of what this is, but the OECD has a useful discussion paper which suggests a definition: "Successful participation in lifelong learning may be said to display four characteristics: individuals are motivated to learn on a continuing basis; they are equipped with the necessary cognitive and other skills to engage in self-directed learning; they have access to opportunities for learning on a continuing basis; and they have financial and cultural incentives to participate".

No evidence could be found to conclude any differently from an earlier HRDC study which concluded "While there was widespread interest among workers and managers alike in the importance of lifelong learning. Employers were found to be highly variable in their responses to the needs of workers for learning. Many employers provided a wide range of flexible work and supportive policies and practices to aid learning (e.g. paying tuition, allowing flexible schedules or time off), but most employers did very little or nothing to aid learning."

The majority of drivers are in support of more educational and other activities to inform employers and employees of their rights and responsibilities under Part III. The majority of drivers were also in support of new provisions including employee learning and training opportunities. Both drivers and employers agree that there is a need for more training on the rules and regulations of the trucking industry, particularly driving safety. Union submissions recommend the inclusion of education benefits. Employers in the most part recognize the need for upgrading their employees but are not in support of learning and training legislation. They suggest it should be up to the business to regulate their training and that educational costs could be too expensive for small companies.

Both Camo-route and Canadian Trucking Human Resources Committee (CTHRC) were the result of industry efforts (carriers associations and labour unions) to find solutions to the effects of deregulation. Initially these organizations sought standardization of industry work practices but both currently engage in the development and delivery of various human resource programs, including training.

A funding model that could be considered is the Quebec education program which requires firms with over 1 million dollar in wages to allocate 1 percent of their wage costs to education. The firms can either provide education with that amount or pay the Quebec government which uses the funds for educational programs in the Province. There is no guarantee that these funds come

back into the industry which contributes the funds, much less the individual firm. The trucking industry is one of the largest contributors to the education fund and organizations such as Camo-route vie for such funds to develop education related programs and materials.

There are numerous recommendations in this report for expanded education of drivers (both for-hire and owner operator) with respect to how they manage their relationship with employers and carriers. It is suggested that the HRDC continue to support the development of curriculum and in particular, educating new and existing drivers on how to evaluate alternative compensation and benefit packages relative to the work that they are asked to perform.

13. Changing the Canada Labour Code – Encouraging Women to Participate in Trucking

Women play an important role in many occupations but trucking continues to be an industry that is dominated by male drivers. The evidence suggests (but is not conclusive) that carrier employers are accommodating women in the truck driving workforce and that simply expanding the Labour Code to accommodate women does not deal with other, perhaps more important root causes of the low rate of employment of women in truck driving. The lack of appropriate facilities at truck stops is outside the control of individual carriers. Cultural values and attitudes change slowly and while employers may be able to encourage and enforce norms of behaviour at their terminals and fixed workplaces, drivers are on the road and in other locations the majority of the time. Finally, loading and unloading a vehicle is physically demanding. Except in cases where freight is loaded and unloaded by forklifts or the shipper, this is a real barrier to women becoming drivers. There are many transportation environments where loading and unloading by the driver is typically not required and some form of education will be needed to dispel the myth that loading and unloading is part of the job in these situations.

Many of the proposals suggested by unions with respect to expanding labour standards or benefits in areas such as maternity, parental, bereavement and other leaves related to family responsibilities, are not specific to the truck driving sector. These are all laudable suggestions but beyond the scope of this research to evaluate since these provisions will have significantly greater impacts on occupations where a larger percentage of women are employed. However it should be recognized that these suggested changes will have scheduling implications for the carriers employing women drivers that are more burdensome than for businesses which have fixed locations of employment.

14. Changing the Canada Labour Code – Redefining Owner Operators (O/O) Under the CLC

Owner/operators are not a new or recent concept in the trucking industry and their place in the driver work force has been well established. O/Os provide a significant percent of the trucking industry's capacity and are used by larger carrier's significantly more than small carriers. There are many economic and operational reasons why carriers use O/Os and why drivers seek to be O/Os. Foremost is the common desire for flexibility. Carriers desire flexibility in increasing and

decreasing capacity without investment. O/Os want flexibility in the amount of work they accept and when they accept the work.

Owner/operators are earning after tax incomes slightly higher than employee drivers but they do not have the benefits that employees receive. It does not appear that owner/operators are driving significantly more hours than employee drivers, have longer trips or have worse home life problems than employee drivers. In fact the driver survey indicates that the majority of O/Os are satisfied with their life as a truck driver. These O/Os have voluntarily chosen a life style and work environment. As with any industry sector, businesses will succeed and fail and this is particularly true for small businesses such as O/Os. It is no surprise to find that O/Os would like the CLC extended to them if there were no change in their status as an independent contractor from an operational and tax point of view.

It appears that including owner/operators under the Canada Labour Code would result in considerable disruption to both the carrier and owner/operator relationship and cause unknown operational and economic consequence for both. The evidence suggests that many owner/operator problems originate from their inability to effectively manage their business activities. Extending the CLC to O/Os does not address the root problem. A non-legislative solution that might improve the ability of owner/operators to know their costs, price accordingly and negotiate effectively, would be to provide or make accessible, educational opportunities to the owner/operator. A number of opportunities can be considered:

- Provide some fundamental business management training skills in driver training schools as well as an overview of the benefits and risks of the O/O business.
- Support or encourage non profit organizations which provide training programs and education to O/Os.
- Direct provision of training and education and development of materials by government or through government support. In the U.S., this would be the role of the U.S. Small Business Administration. Thus Industry Canada might be a participant as well as HRDC.
- Enabling the effective distribution of existing or future education material.
- Recommend legislation on leasing and contracts which may provide more protection to O/Os.

Some of the groundwork for the above programs already exists. The Owner Operators Business Association of Canada (OBAC) was launched in 2002 in response to challenges facing Canadian owner/operators. One of its goals is to offer tools and resources to enhance profitability and competitiveness of the O/O. Excellent educational material can already be found in industry publications.

Another suggestion to support the O/O sector is to provide support and group buying services similar to which is provided by OOIDA to U.S. O/Os. This would make O/Os less dependent on carriers and more mobile with respect to moving to different carriers. Several attempts have been made at establishing a national organization representing owner/operators with the latest and so far most successful, being OBAC. However, less than 5 percent of the O/Os in the survey

were represented by an independent organization representing O/O interests. The U.S. has the advantage of scale with many more O/Os as potential members resulting in OOIDA being a viable representative of O/O interests for over 30 years. Perhaps OBAC or a comparable organization can fulfill a similar role in Canada with public support which helps compensate for the smaller O/O population of Canada. Another alternative would be to encourage OOIDA to expand into Canada or partner with an organization like OBAC.

We end with the observation that the independence of the O/O with respect to their ability to control their workload is a self regulating mechanism to solve the work-life balance challenge. O/Os have the option to take time off when they want. An O/O need not "check in" unless they want a load. For many TL motor carriers, this process is now automated. The O/O calls the carriers automated load matching system, checks the loads available by direction, distance, type and potential revenue and chooses the load that meets the driver's personal objectives balanced against the driver's income objectives.

Unions appear to be the only group that seeks some change in the treatment of owner/operators. With respect to contract drivers their submissions states that there needs to be a clearer distinction between someone who is genuinely an entrepreneur and someone who is really a worker selling their labour power. A similar position is held by the CLC who says the Code should provide equal pay between contract workers and comparable permanent workers performing substantially similar work, that they should have full access to benefits, and receive the same leave, vacation, paid holiday, and severance pay provisions as traditional employees. They also say that non-renewal of a contract after one year's employment should be considered as grounds for unjust dismissal, if there is no just cause for non-renewal and if the work is being performed by a newly hired worker or another contractor.

15. Changing the Canada Labour Code – Treatment of Agency and Contract Drivers under the CLC

Agency drivers are wage-earning employees of personnel leasing companies whose main activity is to provide drivers for generally limited periods to supplement the client's workforce. Agency drivers account for about 5 percent of the for-hire driver workforce and their utilization appears to growing.

Unions appear to be the only group that seeks some change in the treatment of agency drivers and agency employees in general. They maintain that non-standard jobs provide less job security, offer a lower quality of life and make for lower wages. Unions would like to see coverage under the Labour Code expanded to these types of workers. The CAW recommends that drivers in these positions receive equal pay for work of equal value, that they be eligible for equal benefits as are available to regular employees. The Canada Labour Congress said that the Code should address the needs of temporary agency workers by establishing that employers and the agency have joint responsibility for meeting all employment standards and by stopping prohibitions on temporary agency workers taking a job with an employer with whom they have

been placed. They say that there is a need in the Part III process to reflect upon how employment standards apply in a context of extensive contracting out of labour services. Agency workers in the trucking sector are appropriately protected under current labour standards as long as their employer, the personnel leasing company is complying with the appropriate labour code, either provincial or Federal. As the core business of these firms is to recruit, train and compensate employees for temporary work in other businesses, such firms are better equipped to comply with regulations such as those in the CLC. This organizational arrangement in the truck driver marketplace serves a purpose for both employees who are seeking this type of employment and for firms which seek the flexibility afforded by hiring non permanent employees. No changes in the Labour Code seem necessary to protect these employees. However clarification of the status of driver agencies under the Federal Labour Code would allow this form of business to operate properly under the appropriate jurisdiction. The existence of driver service agencies appear to be market driven and many of these agencies serve inter-provincial motor carriers. Therefore the recognition of employer status for this form of business under the appropriate jurisdiction would support the productivity and efficiency of the trucking industry.

The designation of "contract driver" appears to be a relatively new form of employment arrangement that has been adopted within the trucking industry. Contract drivers are not employees as there is no employer/employee relationship nor are they independent contractors in the sense of being an owner/operator because they do not own the truck they are driving. Contract drivers work under a contract for service with the truck owner and may or may not work for a third party trucking company to which the truck is attached. It does appear that drivers in this type of employment arrangement are not subject to the Canada Labour Code if there is a legitimate contractor relationship in place. Both carriers and LAOs have noted that such drivers have mistakenly sought to file complaints with the carrier that used the services of the vehicle owner who subcontracted the driver. Interestingly an illegal version of driver subcontracting has been occurring in the driver agency sector. There is a need for employee protection from such practices which may be practiced by subcontract carriers, vehicle service providers or driver leasing agencies. It is suggested that methods to identify and monitor such practices be devised.

16. Changing the Canada Labour Code – Raising the Bar

A number of submissions to the Commission suggest raising minimum Labour Code standards in many areas including raising the minimum wage, increasing vacation, maternity and other leave entitlements and the inclusion of education benefits. The impact of raising minimum wages and increasing time off entitlements has a direct impact on employer costs and raising other labour standards will have a less direct but real effect.

Canadian domiciled transportation firms compete directly with U.S. domiciled trucking companies in the transborder freight market. It is perceived by Canadian industry stakeholders that labour standards in the U.S. impose fewer driver related costs on carriers in the U.S. than Canadian labour standards impose on Canadian carriers. However, there was not a significant

concern that higher labour standards would put Canadian carriers at a disadvantage in competing for cross border freight. However the carrier stakeholders certainly were not anticipating a significant increase in the cost of compliance with higher labour standards either. Finally the positive conditions such as the abundance of freight and lack of interest by U.S. carriers in the transborder freight market could change.

17. The Role of Unions in Labour Standards

The number of drivers under federal jurisdiction is estimated to be between 83,462 and 97,929 in 2004. Union drivers account for somewhere between 17.6 percent (high estimate of drivers and truck drivers only) and 20.7 percent of total drivers (low estimate of drivers and truck drivers only) under federal jurisdiction.

The most important union in the Federal trucking sector is the International Brotherhood of Teamsters (Teamsters) which represents 11,997 drivers in 165 collective agreements. The Canadian Labour Congress represents 2,802 truck drivers under 19 collective agreements and the CAW represents another 1,808 drivers in 19 collective agreements. 1980 truck drivers and owner operators are represented by other unions as well.

Unions and their collective agreements provide the protection and enforcement of labour standards to the union members that the CLC provides to employees who are not in a collective bargaining unit. It would appear that unions should continue the role as an agent representing employees where they have been fairly elected as the bargaining agent for the employees. The evidence is that they provide benefits above what non-union employee drivers obtain. The generally higher labour standards and conditions of work established by collective agreements can be used as benchmarks for setting the standards in the CLC but this must be tempered by market conditions and competitive realities of the employers. In addition, processes for implementing standards in collective agreements provide possible alternatives and insights on how to improve the process of implementing and enforcing the Code. The calculation of general holiday pay and guidelines for unjust dismissal are two areas in particular where the Code might be improved from using the experience from collective bargaining.

18. Balancing Protection with Productivity – the Need for Flexibility

Employers would like Part III to be more flexible so that the uniqueness of the industry or individual firms can be better accommodated. They want to be able to make arrangements with their workers or unions which would better meet the particular needs of their types of businesses. In contrast, representatives of labour want stronger enforcement of Part III and stronger support for minimum standards including family-friendly policies. The unions argue that individual employees have little power to negotiate agreements with employers and that the employee would inevitably be at a disadvantage during any negotiation over employment standards

The heterogeneity of the trucking industry contributes to a multiplicity of situations where the detailed CLC guidelines fail to appreciate its distinctiveness. This is demonstrated by carriers trying to address factors such as work life balance conflicts drivers face through flexibility in scheduling, by creating multiple city - highway distinctions, the use of a variety of payment schemes, a very wide range of pay schemes and so on.

In the current environment where there is a sellers market for driver labour services in the trucking industry the employee's in this industry also have the opportunity to determine the conditions of work that he/she is prepared to agree to. Some of these conditions are completely acceptable within the act and some are not.

Some degree of flexibility can be accommodated within the act, however there are opportunities for the employer and employee to negotiate flexible modifications that may be outside the scope of the Labour Code but that meet the needs of both. We have found that some employers and employees are utilizing such tactics and changing the work experience in order to retain and obtain drivers and that these employee/employer accommodations are being made even if they are illegal. However for most carriers, the stumbling block with these modified work arrangements is that if they are illegal per se under the Code, any employee that becomes dissatisfied with the firm (for related or unrelated reasons) can file a complaint and have some likelihood of success. In still other cases it is still unclear if these arrangements are inside or outside the scope of the act as they can still be the subject of interpretation.

We have also found that there are significant circumstances where the uniform or fixed requirements under the CLC are very difficult to accommodate in the trucking industry. Specifically there is a fundamental conflict between the carrier's obligation to operate safely and its desire to treat employees fairly. Some carriers will ignore the CLC rules with regard to dismissal where safety is at issue. The obligation to protect the safety and well being of the public, the employee and the viability of the company all take precedence when it comes deciding if a driver should be allowed to continue to drive. The CLC has as its sole objective the protection of employees' working conditions whereas the public interest has dictated that the trucking industry also has an equal or higher consideration to operate in a safe manner. This is not to suggest that employment standards are being ignored, indeed employers are generally following the CLC requirements, but their dedication is tempered by the need to be safe.

The heterogeneity within the trucking industry and opportunity for improving work life balance and productivity certainly support the concept of more flexible agreements between carriers and drivers (and perhaps other employees of trucking firms) but it is unclear whether a specific Trucking Part III is necessary in order to accomplish the desired objectives.

A consideration though in any initiative to permit greater opportunity of contract between employers and employees is the issue of effective enforcement. An appropriate enforcement framework that can recognize and accommodate the dichotomy of approaches to employment standards that are taken within the industry because of its heterogeneity and business size of participants will have to be developed. Such enforcement must ensure that employees are not

coerced into contracts which are in reality win-lose. Without collective bargaining agents to represent drivers in a non union environment, a prerequisite for any effective enforcement is a clear understanding of the contract terms by the employee. Education of drivers on how to evaluate flexible contract terms would be useful.

19. Sectoral Standards

The trucking sector already has some form of sectoral recognition in terms of hours of work and continuous operations exceptions. The effectiveness of the CLC with respect to trucking might be improved by industry specific treatment of CLC divisions that deal with methods of compensation and special recognition might be warranted to address the other regulatory obligations of carriers. These may result in additional exceptions or Operations Programs Directives applicable to the trucking sector. As the number of exceptions and specific directives that are specific to trucking increase, so does the merit of developing sector specific regulations or sectoral standard. This is bolstered by the fact that trucking is the largest industry group under the CLC and effectively implementing the CLC for just that sector is 80 percent of the enforcement workload of the Labour Code.

20. Size of Carrier, Labour Standards Compliance and Driver Work Balance

A recurring theme from the carrier stakeholders, LAO s and several industry organizations is that size does have an impact on the ability of the carrier to comply with labour standards, comply with other trucking regulations and manage drivers effectively.

Analysis of CLC violations by size of carrier in Road Transport shows a clear progression of fewer complaints per employee as the size of the carrier increases for administration and general, annual vacations, general holidays and payment of wages. Most of these divisions of the Code are related to administration issues that most would agree, larger firms would be able to handle better. In contrast, larger firms have a higher ratio of violations in individual terminations and severance pay, both of which involve carrier policy with respect to treat employees when they are terminated. However the size categories used by HRDC to classify employer size is too aggregated to properly reflect the size distribution of trucking firms and the operational differences between them which might exist. HRDC defines small firms as employers of 100 or fewer employees. The vast majority of Canadian trucking firms employ on average only employs 5 persons and industry considers small to be fleets of 5 to 10 trucks. An industry study estimates that fleets 72 percent of Canada's truck fleets (both For-Hire and private) are either "very small" (< 10 vehicles) or "small" (10 - 24 vehicles). Comparing the practices of these very small and small fleets with larger fleet, it was found that size does make a difference. A smaller percent of small carriers provide HR services to its employees and a smaller percent of small fleets offer many of the benefits that the larger fleets provide. This seems to be related to higher turnover for smaller carriers. Smaller carriers tend to rely less on experience and driver record than larger carriers and larger carriers tend to terminate employment more frequently on the basis of a drivers record and qualification. This may explain the greater number of Labour Code violations

for larger carriers with respect to individual termination and severance pay.

21. The Level Playing Field

Fair competitive conditions are necessary for markets to work efficiently. Regulations such as labour standards should not create advantages or disadvantages to any particular group. Differences between provincial and federal labour standards create anomalies where provincially based carriers may have a higher labour standards burden than federally based carriers with whom they compete. The root cause is the all or none classification of a business as either under federal jurisdiction or not. This situation exists for driver service agencies as well. As noted in the discussion of driver service agencies, one solution would be to use the jurisdiction that would be applicable to the movement or job. But this could create administrative requirements that dwarf the complexities that exist even today. Another solution would be to raise Federal labour standards to at least the level of the provinces. But provincial standards are not uniform across the country (and assumed to be unlikely to become uniform given the diverse labour environments across the country). This resolution would lead to reporting and administrative complexities as well. There appears to be a trade-off between the practical matters of being able to implement the CLC without making the process overly complex versus being neutral with respect to its impact on employers under different jurisdictions.

Canadian carriers have traditionally competed well with U.S. domiciled competition due to cheaper labour costs in part due to the lower Canadian dollar. Carrier stakeholders recognize that they compete directly with U.S. domiciled carriers but generally feel that they have enough natural competitive advantage that minor (though not defined) changes in labour standards would not have an impact on their ability to compete. However the un-level playing field between established carriers which comply with regulations and those that do not is a concern. Established carriers are often undercut by competitors who are domiciled in Canada using the same infrastructure and social system as the established carriers but purportedly have a lower cost structure due to the avoidance of compliance.

22. A Two Tier Industry

Deregulation has created a competitive industry which due to imperfections in information quality and enforcement of regulations, has led to two tier industry. There is anecdotal evidence that the 2nd tier carriers comply less with the CLC and other industry standards and regulations and, CLC complaints against these carriers are definitely are the hardest to process. While education of drivers and the shipping public would create a better functioning market, the lack of enforcement of the Code together with the inadequate enforcement of safety and other regulations reduces the natural elimination of the inefficient (in the sense of covering total social costs) carriers from the market. The problem with the current mode of enforcement of the CLC is that enforcement resources are focused on the wrong carrier segment. This creates an unfair playing fielding between the tier 1 and 2 carriers. Effective enforcement will require coordination of multiple departments at both the federal and provincial level. One result could

be a national registry that prevents carriers from avoiding their obligations by moving between jurisdictions.

23. The Market for Qualified Drivers

The driver shortage has been with the Canadian trucking industry for at least five years and is predicted by nearly every industry expert to continue into the foreseeable future. The driver shortage has become the basis for employers being aware of the need to act in the employee's interest. The Commission should consider whether such this shortage is permanent and if not, whether long run policies should be based on this current industry labour supply situation or predicted future changes.

The existing supply of truck drivers has created a sellers market for qualified drivers therefore it is difficult to state how well the CLC is working because drivers do not necessarily have to use the Code to obtain resolution of unacceptable working conditions, they just move on to another employer. Trucking companies have responded to the existing supply situation by applying practices and policies that are in the best interests of their employee's. It is likely that employers will continue to apply good practices even if the supply situation were to improve because the overall labour market still points to an ongoing shortage of workers. A CLC that meets industry and worker objectives in times of both a sellers and buyers market is the objective but there has been little to suggest from stakeholder input that the CLC standards as currently applied would not be workable in each type of market. The degree to which Labour Canada is called upon to resolve employment standards issues is more the consideration.

24. Conclusion

Canada's extraprovincial trucking industry operates in a dynamic environment in which it has had to adapt to economic deregulation, respond to new demand patterns from trade liberalization, comply with expanded border procedures due to security concerns, and adjust to new hours of service regulations in the last decade and escalating fuel prices. In recent years, the shortage of qualified drivers has been the foremost challenge as carriers seek to provide efficient, timely and safe transportation.

In an environment of driver shortages and turnover, it is just as important for carriers to be a good employer as it is to be a good supplier of transportation service to its customers. It is estimated that 2.3 to 2.7 percent of drivers have filed a complaint which resulted in a violation of the CLC in 2004. And though no direct benchmarks exist to judge the 2.5 average percent violation rate as good or bad, a 2.5 percent loss & damage rate or 97.5 percent on-time delivery rate would be unacceptable to many customers.

The driver survey indicates that many complaints are solved internally, but the survey also indicates that many complaints did not reach the formal CLC process due to perceptions that the process takes time and effort, and that enforcement of judgments are sometimes difficult. When drivers realize that they can find employment elsewhere with relative ease, they often take the

path of least resistance and look for employers with more respect for employee rights or other employment conditions. Thus the downward trend in CLC complaints in the trucking sector from 2000 to 2004 may be the result of the driver shortage as much as good carrier management or the efficiency of CLC enforcement. The driver shortage is not expected to abate in the near future but the trucking industry is known to follow cycles in which demand and supply imbalances reverse each other. All of this suggests that neither carrier management nor HRDC can be complacent based on the current level or trend in complaints.

For the most part, the established sector of the Canadian trucking industry was surveyed in this research. This report has labeled this sector, the Tier 1 segment of the industry and generally these carriers comply with the CLC out of economic self interest which reflects a long run outlook, ability to comply, and the easy access that enforcement officials of labour, safety and other regulations have to these carriers. These carriers generally do not have any complaints about the Code with respect to the *current* level of the standards such as the minimum number of statutory holidays, minimum wages, hours of work and related overtime provisions, and have embedded these requirements into the cost of doing business. However, we are confident that carriers competing in the Canada – U.S. market would have a change of mind if the “bar” was raised significantly which could change their competitive position relative to U.S. domiciled competitors.

These carriers *do* have concerns about how the Code is implemented. Most complaints (except unjust dismissal claims) and subsequently violations of the CLC in trucking are in some way related to different interpretations of the calculation of the proper payment of wages to the driver. This may be the incorrect calculation of wages, holiday, vacation, overtime or severance pay. In part this is due to the inability of drivers or carriers or both to correctly apply a labour code that is based on a traditional manufacturing model. A potential solution is to recognize that an output based compensation system is an inherent feature of the trucking industry and reexamine the time based payment compensation paradigm that underlies the current CLC. In part, confusion over applying the CLC is due to the general use of a one size fit’s all set of regulations to a working environment that is spatially broad and heterogeneous across sectors of the trucking industry, across firms in the same geographic area and even firms competing with each other. Flexibility in the application of the Code under different circumstances may be warranted but there must be clear Operational Policy Directives or other guidelines that can be followed consistently to protect employee rights. For example, carrier stakeholders support the simplification of statutory holiday wages to reduce administrative costs but this is difficult under the current interpretation of the Code. Greater freedom of contract might also mitigate problems that carriers have with utilizing drivers in both city and highway service and unauthorized deductions. At the same time, employees not protected by collective bargaining must be educated or assisted in interpreting employment contracts. Providing toll free help lines to HRDC specialists should be considered.

Carriers also express concerns about the requirement for 2 weeks advanced notice of termination as this may pose risks to carrier assets and safety, as well as the weight placed on safety considerations in Unjust Dismissal rulings. Carriers do not want to sacrifice safety in seeking

profitability. They do not want unqualified drivers to control expensive equipment on public highways, but must do so if they are not willing to pay 2 weeks salary or retain the driver in another capacity for two weeks. The exception is when the driver's employment is terminated for just cause. Carriers feel that the criteria used by adjudicators are applied inconsistently, do not recognize the importance of safety enough and are not transparent. Consideration should be made to establishing criteria or precedents for Unjust Dismissal hearings and explicit recognition of safety in termination decisions.

There are suggestions to legislate new requirements into the CLC to improve the work life balance of drivers, the education level or ability to learn, and the working environment of women. The CLC does not appear to be an efficient vehicle to achieve these objectives, especially in the heterogeneous trucking industry. While incentives might be provided, these issues seem best resolved by the self interest of carriers to attract and retain good employees and the individual circumstances of each carrier. In fact, the heterogeneity within the trucking industry and opportunity for improving work life balance and productivity supports the concept of more flexible agreements between carriers and drivers (and perhaps other employees of trucking firms). An appropriate enforcement framework that can recognize and accommodate the dichotomy of approaches to employment standards that are taken within the industry because of its heterogeneity and business size of participants will have to be developed. Such enforcement must ensure that employees are not coerced into contracts which are in reality win-lose (as opposed to win-win). Without collective bargaining agents to represent drivers in a non-union environment, a prerequisite for any effective enforcement is a clear understanding of the contract terms by the employee. Education of drivers on how to evaluate flexible contract terms would be useful and the availability of advisory resources from HRDC should be considered.

There are proposals to extend the CLC to agency drivers, owner operators, and contract drivers. Agency drivers *are* protected by either provincial or Federal labour code already so no change is necessary, just diligence in enforcement of the Code. Extending Part III to cover OO should proceed cautiously if at all since the CLC does not address the root problems that have led to complaints in the OO sector and in recent years, the lot of OO have become more comparable with employee drivers. There would be significant disruptions in the supply of driver and vehicle capacity were OO to be put under the umbrella of Part III of the CLC with potentially marginal improvement in the viability of the OO sector. There *does seem* to be a need to identify and monitor potential violations of the Code with respect to protecting drivers who are persuaded to work as a "contractor" for a carrier, a driver leasing agency or vehicle service provider.

Many of the suggestions to this point support customization of the CLC with respect to trucking. The trucking sector already has some form of sectoral recognition in terms of hours of work and continuous operations exceptions and further industry specific treatment of CLC divisions that deal with methods of compensation and special recognition might be warranted. These may result in additional exceptions or Operations Programs Directives applicable to the trucking sector and ultimately merit developing sector specific regulations or sectoral standard. Even without sectoral recognition, dedicating resources and specialization of Labour Affairs Officers

to the trucking sector would reduce concerns about the expertise and knowledge of LAOs dealing with trucking sector complaints.

All stakeholders should be involved in any change process for CLC with respect to trucking. The Tier 1 segment trucking industry is in part represented by industry associations and particularly the Canadian Trucking Alliance. However no industry as heterogeneous as the trucking industry can have unanimous agreement on all issues and this research has found that to be the case. Individual carriers, including non-association carriers should be given an opportunity to provide input into proposed changes or proposing those changes. This is also true for labour but it is unrealistic to expect drivers to be proactive. Focus group interviews should be utilized to assess how drivers will react or be impacted by specific changes proposed to the CLC. In addition, contractual terms utilized in collective agreements provide valuable insights on how to implement the Code and appropriate standards. Finally, the input of experienced Labour Affairs Officers is crucial since they see first hand the administrative challenges that carriers face in complying with the CLC. They also see first hand that there is a 2nd tier sector in the trucking industry.

The 2nd tier of the trucking industry is known to Labor Affairs Officers as those carriers which are "under the radar". They comply less with the CLC and other industry standards and regulations, and CLC complaints against these carriers are the hardest to process as they are difficult to contact. Inadequate enforcement of safety and other regulations and other market imperfections has led to the sustainability of this segment of trucking. This has led to a pattern of enforcement where the carriers who are most likely to voluntarily comply with the CLC and have a lower rate of complaints or violations per employee are the target or focus of relatively more enforcement action. This creates an unfair playing field between the Tier 1 and Tier 2 carriers as the Tier 2 carrier sustains a lower cost structure by avoiding compliance costs. The long run cost may be unsafe drivers and carriers operating in the Canadian trucking industry. The challenge is to find effective methods for enforcing the CLC across all segments of trucking. Effective enforcement will require coordination of multiple departments at both the federal and provincial level. One result could be a national registry that prevents carriers from avoiding their obligations by moving between jurisdictions.