



Owner-Operator's Business  
Association of Canada

Association professionnelle des  
routiers autonomes du Canada

...from the  
director's chair

## Overdue for a look at OT?

It was a fairly straightforward Facebook post, prompted by a pamphlet I picked up at a truck show earlier this year. "Under Part III of the Canada Labour Code (Labour Standards), employee drivers of federally regulated carriers are entitled to overtime pay after 60 hours/week. Are you regularly paid overtime? Have you been told you're not eligible? Tell us your overtime experience."

I obviously hit a hot-button topic; the comments went viral, my e-mail inbox overflowed, and folks across the country continue to share their overtime stories with me. I wasn't surprised that the majority of folks I talked to had never received one penny of overtime, but what really struck me was that most drivers truly believe they aren't eligible.

The pamphlet – Information on Labour Standards: 9A Hours of Work, Motor Transport – is prepared by Human Resources and Skills Development Canada, the federal department responsible for the Labour Program and the Canada Labour Code (CLC). It's just one of several information products HRSDC makes available at various trucking events in an attempt to heighten awareness in the industry about the rights and responsibilities of both employees and employers under the CLC. So far, their outreach doesn't appear to be working. For years, trucking has had the dubious distinction of generating more complaints than any other sector – at times close to 80% – received under the Labour Program.

Regulations governing the trucking industry are among the most complex in the country, and nowhere is this more apparent than in the interpretation and application of the CLC.

Much of the CLC, especially the Part III, Labour Standards, is confusing and out of step with the trucking industry, which has led to trucking developing its own standards and modes of operation that are quite different from the typical industrial model. One key difference is how drivers are compensated for their work. Since transportation output is based on distance, performance-based payment schemes are the norm, meaning most drivers are paid on a productivity, or per-mile, basis. And there's the rub.

Pay schemes that don't fit the traditional model

– or the CLC rules, which were written with hourly-paid workers in mind – have resulted in a whole lot of difficulties for employees when it comes to understanding their pay packages, but also for employers in determining rates of pay in order to arrive at pay-related benefits such as holiday, vacation and overtime pay.

The HRSDC folks agree with me, that compensation packages are a huge part of the problem. The many complexities in the way drivers are paid, how they (and their bosses) keep (or don't keep) records, and their various interpretations of definitions, cause more than enough confusion to justify the stunning number of complaints. Layer on the differences between Transport Canada Hours-of-Service rules and the CLC hours-of-work rules, and well, need I say more?

There's no question that drivers "get it" when it comes to the nature of their work compared to, say, the traditional manufacturing model where the pay scheme is generally based on time. And yes, they know that if they're working in an extra-provincial trucking operation, they'll be spending time away from home and working long hours which, in other sectors, would unquestionably be considered overtime.

All that being said, none of this lets an employer off the hook from developing pay a package that is predictable and transparent, and that compensates employee drivers – at a fair rate – for all the work they do, driving and otherwise. The law is quite clear: if an employee works longer than the standard hours (in a day or a week), he or she must be paid at least one-and-one-half times the regular rate of pay.

But it's those two little phrases – "standard hours" and "regular rate of pay" – that create the wiggle-room and make it possible for employers in the trucking industry (whether intentionally or unwittingly) to ignore overtime for highway drivers and cause peals of laughter among drivers when I ask them if they're getting paid overtime.

First of all, there's no question that hours-of-work provisions under the CLC are modified by the Motor Vehicle Operators Hours of Work Regulation, or HoS, as we know it. In other words, trucking



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industry HoS trump CLC hours of work when it comes to determining "standard hours." Hence the special interpretation bulletin I refer to above. So, for employee truck drivers, standard hours after which overtime is payable are 60 hours/week for highway drivers, and 45 hours/week or nine hours/day for city drivers.

Furthermore, all hours other than those spent off-duty (lines 1 and 2 on a log sheet) are counted in calculating working hours, so in a week, while you can't drive after 70 hours on-duty in seven days if you're using Cycle 1, your combined on-duty time, both driving and not-driving (lines 3 and 4) count as work, according to the CLC.

But figuring out a log book is probably the easiest part for drivers, and, by the way, one more very good reason not to shoot yourself in the foot by making "adjustments." The issues are much more complex, as both the HRSDC folks and I discovered, after several e-mails and phone calls and many hours poring over hundreds of pages of bafflelegab in reports, studies, and submissions that mark the decades-long struggle with labour issues in the industry. I came up with a long list of questions based my own research as well as the comments and input I got from drivers, and we agreed to meet in September to give the now also-puzzled folks as HRSDC time to come up with some answers.

At the end of the day, they tell me, the standards are there to protect the rights of workers, and to foster positive workplace environments and proactive relationships between employers and employees. We'll see. Stay tuned. To paraphrase Billy Joel, you may be right, I may be crazy (but for all you know, I may be right).