



Owner-Operator's Business
Association of Canada

Association professionnelle des
routiers autonomes du Canada

...from the
director's chair

Working OT on overtime

Overtime pay – the lack of it – is one of the most hotly-debated and ultimately misunderstood topics in the complex regulation we call Part III (Labour Standards) of the Canada Labour Code (CLC), which sets out minimum standards that federally regulated employers and employees must follow.

My September column, which asked (rhetorically) if we were overdue for another look at overtime, stirred the pot again. The subsequent outpouring of comments, along with many conversations on Canada Calling (our radio show), and on Facebook, led to renewed discussions and a meeting with the folks in the Workplace Directorate, part of Human Resources and Skills Development Canada (HRSDC), the federal department responsible for the Labour Program and the CLC.

I should say here that our discussions have been specifically about drivers working for a federally regulated employer, defined as any business or industry that operates interprovincially.

However, if you do not work for a company covered by the CLC, that is, for a company domiciled and operating within one province, your provincial or territorial ministry of labour regulates employment standards, including overtime. So while the fine print may vary from province to province, there is no getting around it. Every employee is entitled to be compensated for the time they work over and above their standard hours of work.

It's also worth noting that we're talking about employees which means company drivers, not owner/operators. If you're the boss, it's up to you to make sure you're charging your customer (the carrier you work for) enough to pay yourself a decent wage, including overtime. But that's another column for another day.

Our meeting with HRSDC was productive, and a good start to clarifying many of misconceptions about overtime. Thanks to those who shared their overtime experiences with us, we went to the meeting armed with eight pages of comments, questions, and a long list of reasons drivers have

been given by carriers who don't pay overtime, and indeed why drivers themselves believe they aren't eligible.

Our HRSDC friends are well aware of the disproportionate number of complaints from trucking, which are often rooted in misinterpretation or misunderstanding on the part of both employees and employers about their rights and responsibilities under the CLC. Still, they were astonished by some of the excuses.

"It's already included in the mileage rate," caused a loud groan. Others on the myth list? You're not eligible if you are paid by the mile; it doesn't apply unless you have a union contract; you can't get paid overtime if you aren't paid by the hour; drivers aren't eligible because trucking is not a skilled profession. And my favourite, an actual quote from a carrier, "...if we had to pay long-haul drivers overtime we'd just have to drop the base rate of pay they're getting now and come up with another scheme to pay them the same amount."

But the bottom line? Notwithstanding the nature the job and the complexities in the way drivers are paid, 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. Convolution and creative interpretations of "standard hours" and "regular rate of pay" and "city or highway driver" don't let employers off the hook.

At our meeting, it quickly became obvious that a myth-busting exercise is in order, and Directorate staff are currently working their way through the list to come up with a catalogue of plain-language FAQs that will hopefully enlighten both carriers and drivers and lead to an informed industry-wide discussion on the issue.

Not that there hasn't been lots of "discussion" in the past. In 2004, the feds set up a special Federal Labour Standards Commission and embarked on a comprehensive two-year review of Part III of the CLC. Recognizing the significance of trucking and the unique workplace and labour problems it



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faced, a separate study of the trucking industry was commissioned.

The study was carried out by UBC professor Garland Chow, and his report "Labour Standard Issues in the Inter-Provincial Canadian Trucking Industry" was presented to the Commission in 2006.

Chow's research was extensive, and included interviews with motor carriers, trucking associations, driver agencies, journalists, and most importantly, with hundreds of truck drivers, working in every sector, from one end of the country to the other.

If you're looking for a catalogue of trucking workplace woes, you'll find it in Chow's report. He does a pretty good job of telling how things are supposed to work – in the opinion of the carriers, the drivers, and the regulators – and how things actually work in the real world. At the end of the day, the bosses blame the workers, the workers blame the bosses, everyone blames the regulators, and nothing changes.

I mention this report because although eight years old, it is actually full of useful information and recommendations. But make no mistake. HRSDC is not a proactive organization when it comes to the Labour Program. The whole process is complaint-driven, so if no one complains or questions, nothing happens.

Watch the OBAC Web site for a new Labour Standards section in the Toolbox. The first thing posted will be the trucker-friendly FAQs, along with a number of studies and reports I've been busy retrieving from cyberspace recycle bins. Restarting the discussion is fine, but this time, let's finish it.