

**EFFECTIVENESS OF PART III OF THE CANADA
LABOUR CODE ON THE TRUCKING INDUSTRY
– THE EMPLOYEE PERSPECTIVE.**

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Introduction

Part III of the Canada Labour Code (CLC) governs labour standards for non-union employees under federal jurisdiction.

The standards address both employer and employee rights, obligations and working conditions including holiday and vacation entitlements, payment of wages and termination. Employees working in the trucking industry are amongst the largest category of worker covered by the Canada Labour Code. The industry also offers a wide array of employment situations across its various sectors which complicate the effective application of the Code in regulating employee/employer relationships.

The question of the CLC's value in governing labour standards in the trucking industry was explored by the Federal Labour Standards Commission in its CLC review in 2005/06. The Commission posed a number of questions about the effectiveness and fairness of the administration of the current CLC. Indicators such as a decreasing number of complaints from employees in the trucking sector, suggests that employees are not using the mechanisms available to them in the Code to resolve their employment standards disputes. In order to understand this trend and obtain opinion and perspective from employees on the CLC, a nationwide survey of long distance truck drivers was undertaken and analysis of CLC complaint activity was conducted.

Survey Methodology

It was important to obtain direct driver viewpoints and driver interviews at truck stops was determined to be the most cost effective means of obtaining objective responses from a broad spectrum of over the road drivers under Federal jurisdiction. It was recognized that a truck stop survey is sufficient for obtaining input from intercity drivers; in particular long distance drivers engaged in non-scheduled, primarily truckload, trucking services, but it was acknowledged as well that this methodology may also result in under sampling of other categories of employee drivers. This under sampling may include intercity drivers of schedule motor carriers, primarily LTL, who may be scheduled along routes (or trip legs) that allows them to bypass truck stops and local service drivers who typically do not stop at highway truck stops and therefore would not be surveyed during the roadside survey process. This bias should be recognized in interpreting the survey results.

Surveys were conducted at 15 truck stops in 7 provinces. Fourteen student surveyors from local universities in each province were engaged to conduct the surveys working under the supervision of a Survey Coordinator who was familiar with the industry.

The survey instrument was a computer assisted questionnaire comprised of approximately 60 to 68 questions, with the actual number dependent upon the category of driver responding and the answers to previous questions. The majority of the questions required short answer responses such as “yes, no” or to choose between categories such as “are you a full time, part time or casual employee”. A small number of questions required quantitative responses such as the “number of drivers working for your company”. Responses to all such questions were directly inputted into a laptop computer which controlled the sequence of the questions, dependent on responses to current questions. Finally there were several open ended questions for which the respondents spoke directly into a microphone which digitally recorded the responses.

Anonymity and the opportunity to have their views expressed in an important study were emphasized in the initial contact with each driver to encourage the drivers to participate in the survey. An

incentive in the form of a \$5 lottery ticket was offered after the drivers accepted the invitation to respond. This incentive was perceived to have encouraged the drivers to respond accurately and sincerely.

The interviews were conducted in the fall of 2005 and the survey successfully interviewed 449 drivers who completed the full interview (3 interviews were discarded due to incomplete answers). Based on the worst case assumption that the population proportion of each parameter is $p = .5$ and assuming a desired level of confidence to be at the .01, the estimates of proportions from this sample (e.g., the percent of drivers who say yes to a particular question) is within + or - 5.5 percent of the true proportion in the worst case, with only a 1 percent chance that this estimate is wrong.

The distribution of the surveys by employee type was 280 employee drivers, 12 agency drivers, 157 owner operators, and by carrier type, they were 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. The employee driver survey data are analyzed in this research.

The driver surveys were conducted in parallel with stakeholder interviews. These stakeholder interviews were conducted in 9 focus group field interviews, 58 individual company field interviews and 4 telephone interviews. Ninety-five persons from 59 organizations were interviewed at 44 different venues/occasions. These stakeholders included representatives of trucking companies, industry associations, unions and government.

Complaint History in the Trucking Industry

Human Resources Development Canada (HRDC) records show that complaints in the Road Transport line of business are by far the most significant source of complaints by workers under federal jurisdiction and account for 58% of all complaints, although the number of complaints have been falling since 2000. Complaints from all other major industrial sectors, except the postal service, increased during this period.

The majority of the complaints (82.3%) are handled individually with unjust dismissals representing almost 16 percent of the complaints. Road transport complaints are distributed across the country in nearly the same distribution as drivers are distributed across the country. An important issue is whether the complaints that are filed actually reflect the degree to which labour standard problems exist in the industry. The survey provided insight on the effectiveness of the CLC in responding to labour standards issues.

Employee awareness of CLC complaint process

One indicator of the effectiveness of the Part III of the Code is the familiarity that labour has with the CLC as an avenue for redress. The familiarity of the complaint resolution process was assessed in two steps in the driver survey. First, employee drivers were asked whether they were “Aware of the Canada Labour Code and that it provides Minimum Employment Standards”. Over 72 percent indicated that they were aware of the Code. There initially appears to be a pattern showing that the more experienced drivers were more familiar with it until a sharp decrease occurred with the oldest drivers as illustrated in Table 1.

Table 1 Awareness of Canada Labour Code and That It Provides Minimum Employment Standards Protection for Employees under Federal Jurisdiction

Years of Experience	Number	Valid Percentage
2 years or less experience	16	68.8
3 – 19	125	72.0
20 – 37	80	77.5
38 years or more	22	63.6
All	243	72.8

Source: Truck Driver Survey

After the interviewer reviewed with the driver the various types of complaints that might be made under the code with respect to labour standards, he/she was asked if they were aware of the “Complaints Resolution Process under the Canada Labour Code”. The review served to remind some of the drivers that they in fact were aware of the CLC but did not know the precise name. Hence the percentage of persons knowledgeable of the existence of the CLC rose to 77 percent. Again there is some evidence that the more experienced drivers are more familiar with the CLC than less experienced drivers.

Overall, the driver survey confirmed that the majority of drivers were aware that there is a CLC and that there was a complaint resolution process. Since most drivers are experienced, most have been made aware to the existence of the CLC from employers or from other drivers.

This does not mean that drivers are so familiar with the process that they can use it easily. The issue as to the extent to which drivers utilized the CLC process provides another indicator as to its effectiveness.

Filing complaints

The driver survey reported that a total of 344 labour standard complaints were made by 133 of the 247 employee drivers interviewed. These were all complaints that they had or could remember, not the number of complaints over a recent period of time¹ hence no firm conclusions can be made about the rate of complaints.

Only 43 or about one third of the drivers that had a complaint actually filed a complaint under the CLC. The reasons identified for not filing

¹ Since we estimated that the rate of complaints was less than 3 percent, asking driver respondents about CLC complaints during the last 12 months would be unlikely to provide much information about the nature of the complaints and the propensity to file a formal complaint. Therefore, the drivers were asked about all labour standard complaints that they could think of in their career. The average years that these drivers were in the industry were 17.7 years. Over that length of time, this would produce a complaint rate of .78 percent. If we assumed that the drivers were thinking over the last 5 years, the complaint rate would be 2.5 percent, a figure in the range of our estimate based on CLC complaints and industry employment.

a complaint with the Federal government by 71 of the drivers are summarized in Table 2. Some drivers gave multiple reasons, resulting in 88 responses. Twenty-six percent of the complaints were not referred to Labour Canada as resolution was obtained with the employer directly. The following oral remark exemplifies this position “...if I ever have a problem with my employer I take it right to them. Or since (sic) try to go through different channels go right to the boss. If he can't resolve it, then you go from there.”

Table 2 Reasons Why Complaint was not Filed to Federal Government (N=71)		
	Number	Percent
Did not know there was a complaint process	3	3.4
Resolved it with my employer directly	23	26.1
Did not know who to go to	2	2.3
Too much effort and time	20	22.7
Low chances of being successful	18	20.4
Employer intimidation	6	6.8
None of the above	16	18.2
Total	88	100
<i>Source: Truck Driver Survey</i>		

While the largest percentage of drivers did not file complaints because they attempted to resolve their complaint directly with their employer, about 20 percent cited “the low chances of being successful” as their reason for not filing. This response may reflect the interviewee’s view of the legitimacy of their potential complaint or it may suggest that drivers do not view the CLC process very positively. This reason along with “too much time and effort”, which

accounted for another almost 23 percent of the reasons a complaint was not filed, may be cause for potential concern as together they represent over 43 percent of the reasons why complaints are not filed. They indicate driver rejection of the value of the complaints resolutions process as opposed to its usefulness as a tool for seeking redress and can therefore be viewed as barriers to employees filing valid complaints

The worst case estimate in the truck driver survey is that 38 out of 133 drivers or 28 percent of the drivers with a complaint may not have filed a complaint for either of these reasons. A common remark made by both the carrier stakeholders and numerous drivers is that the drivers often walk away from a company rather than file a complaint because it is so easy to find new employment.

The survey was not designed nor was it intended to provide any judgement as to the legitimacy of the complaints identified by the drivers but the most pessimistic scenario would be to assume that all of these complaints were legitimate and that two thirds of the complaints were never brought forward to a Labour Affairs Officer (LAO). This does not mean however that the real number of complaints in the trucking industry is 3 times the number filed with the Labour Canada. For example the driver survey under sampled union drivers who generally file their complaints with the carrier directly through their union. The driver survey was focused on long distance drivers where issues of turnover are more prevalent. The majority of labour complaints occur at termination but the driver survey under represented the shorter haul drivers who stay with their companies longer. We can conclude that there are likely more complaints in the industry than are filed with Labour Canada but how much more is not known.

The reasons behind why drivers did not complain were probed further in the survey.

Low chance of being successful

This response may arise from a driver's perception that the complaint has little legitimacy, but it may also be a consequence of attitudes toward government generally. Many of the oral remarks truck drivers

made, did denote negative views of government, even government programs intended to protect them. This likely arises from the visible role of government in regulating industry activity in many areas important to a drivers working environment including hours of service, driver qualification, size and weight restrictions, border security and driving regulations (e.g. speeding). Often drivers cannot distinguish between these different programs and their intent. For some drivers it is hard to imagine that the Federal government is really looking after his/her interests.

Success also relates to the ability to enforce a complaint judgment in a reasonable time if at all. It is evident from remarks made in the driver survey that the likelihood of collecting from carriers that move into and out of the industry to escape enforcement penalties influences the decision to file complaints. Examples of comments received include:

- § They should do something about employers who go bankrupt and...
- § When I put my complaint in - it was ignored and within after 30 days when I had my complaint in, the employers (sic) closed their doors and was gone and I never heard another thing from the labour board about it.
- § Worked for a guy, he owed me money, he never paid me - didn't pay me vacation pay. I called the Labour Board about it and they told me the truck was in international carrier crossing Canada and the U.S. and they said it wasn't up to them. All they did was just pass the buck and I don't have time for people like this.

Too much time and effort

For over a decade the demand for good drivers has exceeded the supply of qualified drivers. Consequently drivers have the alternative of moving to another carrier if they are dissatisfied with the working conditions at his/her place of current employment. The driver survey found that nearly 89 percent of employee drivers believed that they could find alternative employment in less than a week. In this employee's market many drivers can easily choose to quit rather than complain. Said one driver respondent "holiday, vacation pay a lot of

that are not enforced - a lot of guys aren't getting paid. Drivers are lazy and don't push for their rights and just go to another company. Drivers are the one to blame.”

This is compounded by the length of time and effort that a driver may have to go through in order to properly process the complaint. There is a particular hardship on long haul drivers, who may be out of town for a week or more at a time, to respond to an LAO’s request for information or clarification. Some drivers who successfully won their complaints said:

§ “I can't say it wasn't resolved fairly. In my opinion it took way too long. The government could have sped up the process. Two years in my opinion is too long for it to be resolved”.

§ “It was solved, but it took too long. The longer it takes, the less fight you will put for it.”

§ “Took almost 2 years for it to be resolved. Should have been done much sooner than that.”

Some driver remarks suggested that the LAO’s are not familiar enough with the trucking industry or are not good at providing customer service.

§ “Put a normal working person there, somebody who knows what is going on in the real life instead of coming from the school into there.”

§ “Improvements: Maybe if they listened. Things that should be covered: All those departments are glorified government politicians giving their kids a summer job don't know anything - never worked a day in their lives. Nothing every gets done.”

Employer Intimidation

The Driver Survey indicated that a small number of drivers (6) did not file complaints with Labour Canada due in part to employer intimidation. One driver remarked “More people should launch complaints - a lot of people have complaints but are afraid they'll have a black mark on them.”

Employees are protected by the option of confidentiality in the complaint process but confidentiality is not possible when the complaint is with respect to unjust dismissal, severance pay or unauthorized deductions when an employee is separating from the company. For complaints initiated by employees remaining with the firm, confidentiality is more important and this need normally occurs in disputes involving holiday pay, overtime calculation, vacation and the calculation of various other benefits. The typical procedure is for the LAO to conduct an inspection of records, retrieving a sample that contains if possible the employee's record as well. A few drivers indicated that it is impossible to disguise the fact that they have filed a confidential complaint when they are employed by a very small firm where the employer need only guess between 2 or 3 individuals to narrow down "the culprit". There is therefore a significant likelihood that a drivers complaint cannot be handled anonymously and the driver can be identified and be subject to retribution from the employer.

Knowledge of Code and complaint process

Only 5 of the 88 reasons for not filing a complaint with Labour Canada were related to the lack of knowledge. As previously noted, about 23 percent of the drivers in the survey were not aware of the complaint resolution process available to them under the Code. A number of oral comments from the drivers point to the frustration and offer suggestions:

- § A lot of guys out there that don't realize the Code is there. Make it more public, maybe put it at a truck stop or have some pamphlets.
- § Inform people about them because a lot of people don't know about the standards. Truck drivers are on the road 7 days a week and don't know where to go. Someone should be out there informing us.
- § These new people coming out on the road should have a lot more training before they get behind the wheel of a truck.
- § I don't know how things work since I'm new to the countries. Don't really know my rights and duties yet.

- § Should be more literature on it. More places where it is accessible by drivers - now drivers got to go downtown to pick up the Labour Code. Should be aware of where drivers are because you can't park a rig downtown. Labour standards not covered under the Code: just have more access to the changes - things are not publicized to the driver, only find out about it when they have a problem.
- § The people who work for the labour standards board should be educated on what laws there is so when you ask a question they don't take days to answer the question.
- § We knew they existed but just never used them. Should be taught everything in school.

When asked “Whether there should be more education and other activities to inform employees and employers of their rights under Part III”, 79.2 percent answered in the affirmative.

Summary

The driver survey suggests that only about one-third of driver complaints reach the CLC resolution process. The reasons are

- § Employer intimidation plays a small role though likely more so in very small carriers..
- § 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.
- § 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 with the existing employer, many drivers will choose the path of least resistance.
- § 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.

Recommendations and Conclusions

Employees in the trucking industry represent the largest single group of workers under the Canada Labour Code and are the source of more complaints than any other industry sector. The driver survey indicates that for-hire trucking company employees do not see the Code as a particularly useful tool for resolving complaints with their employer and choose to ignore the remedies available to them under the CLC or prefer to address their complaints directly with their employer. From the standpoint of good labour relations, dealing with one's employer to resolve labour standards issues is preferred, but where resolution is not possible, the mechanisms available under the CLC should be effective in settling disputes between employee and employers.

The survey results have shown that, for a number of reasons, only about one-third of drivers with a complaint initiate the CLC complaint process. The current conditions in the trucking industry where it is an employee market make it easy for a driver with an actual or perceived complaint to deal with it by simply moving on to another employer if he/she cannot achieve a satisfactory resolution to their problem.

Increasing awareness of the CLC among drivers through an education program could result in it being used more often by drivers who have a complaint. Most of the carriers interviewed in the study indicated that they informed their employees of the CLC and include notices in their driver handbooks and the driver survey confirmed that most drivers are aware of the CLC. It appears that more detailed counselling of drivers as to how the CLC works is necessary. However this is a process that does not directly result in increased driver productivity or safety and therefore a time consuming activity that neither employee drivers nor employers are likely to set as a priority. A partial long run solution would be to require a module or section of government funded driver training programs to review the CLC and its remedies for driver complaints. Another solution is to have LAO's regularly visit carrier fleets and give short and concise information sessions. Some of these sessions could be at truckstops.

At the same time drivers have very negative views about the CLC process itself, the two most significant being that it involves too much time and effort and there is little chance of success. The time and effort factor may reflect issues that can be influenced by Labour Canada and some that cannot. While improving the complaints process may not likely to impact the driver shortage issue, a more streamlined process may influence retention by making the CLC more user friendly. One technique already implemented by Labour Canada is to utilize an Early Resolutions Officer (ERO) who is the first contact with the driver filing a complaint and who provides advice to drivers as to whether the CLC applies and how to proceed. These ERO's are regionally based, however, and most do not have the same in depth knowledge as the LAOs. We recommend that ERO's be organized nationally so that truck drivers can access EROs for advice from any location that they are physically. The ERO's that are resourced nationally can then specialize in "trucking" complaints and provide more knowledgeable service that is more accessible.

The probability of collecting on a judgement 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 judgements, if ever.

The issue of a lack of confidentiality, while only affecting a small number of drivers who complain is deserving of some attention. It is important to any complaints process that drivers can be assured their complaint will not result in further problems with their employer. There does not appear to be any solution to the "small carrier" situation where the carrier is so small, it is difficult to "not" identify a complainant. This suggests regular follow ups by LAO's in these situations. An explicit regulation that prohibits the disclosure of complaint activity in a driver's employment record could be appropriate.

Improvements in the CLC complaints process may also be beneficial for employers by providing them a more informed workforce who are aware of both their rights and their responsibilities under the code. An improved process may result in a larger percentage of legitimate

complaints and help reduce expensive employee turnover through quicker resolution and less driver dissatisfaction with their employer.

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.

The survey determined that the reasons for the decrease in complaint volumes are varied and include a lack of awareness of the complaints process on the part of workers, a perception that the process does not work and a tendency for workers to address their complaints directly with their employer. The shortage of drivers at the time of the survey also contributed to drivers “walking” rather than “complaining”.

These findings suggest a number of changes in the administration of the CLC are warranted. Specific operational recommendations suggested in this paper will certainly improve the situation. However, the challenges of applying labour code remedies in transportation where services are provided over a large geographic space has resulted in an inherent difficulty in interpreting and applying the CLC to the spatially dispersed trucking industry.

The particular circumstances of the trucking industry, where employees do not work in a supervised workplace, suggest a different treatment of labour standards management, either through legislation or specialized services. The legislation or services would recognize specific industry requirements and also make the CLC more effective in light of these requirements. Support for special treatment of the trucking industry is also justified by the large percentage of complaints under the CLC accounted for by the trucking industry.