



**Proceedings**  
**CILTNA Pacific Chapter**  
**Gateway Series**  
**Breakfast Meeting**

Guest Speaker:

Andy Smith

former BC Container Trucking Commissioner

Thursday, October 8, 2015

Terminal City Club - 837 W Hastings St., Vancouver, BC

*Proceedings assembled by:  
Michael Bean, student,  
Sauder School of Business,  
University of British Columbia*

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## Thank You to Our Sponsors

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**BC Marine Terminal  
Operators Association**



## Breakfast Programme

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- 7:00 a.m. Registration
- 7:30 a.m. Welcome by **Marian Robson**, Chair, CILTNA Pacific Chapter
- Introduction of Student Volunteers by **Martin Crilly**, Member, CILTNA Pacific Executive
- 8:00 a.m. Introduction of the Speaker by **Bob Wilds**, Member, CILTNA Pacific Executive
- 8:05 a.m. **Andy Smith**, former BC Container Trucking Commissioner, speaks
- 8:50 a.m. Question and Answer Period
- 9:30 a.m. **Madeleine Marshall**, Student, UBC Sauder School of Business, thanks the speaker
- 9:35 a.m. Breakfast adjourned
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## Biography of the Speaker: Mr. Andy Smith

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Andy Smith served as BC Container Trucking Commissioner from February 2nd to September 15th, 2015.

He assumed the role of president and chief executive officer of the British Columbia Maritime Employers Association (BCMEA) in October of 2007. While in this position, Mr. Smith was instrumental in having successfully concluded an historic eight-year collective agreement (from 2010 to 2018) on the West Coast waterfront, which has greatly improved Canada and B.C.'s Asia Pacific Gateway's international reputation for reliability. Prior to this, Mr. Smith worked as an advisor to the president of Interfor, a major B.C. forest company, on labour, environmental and forest policy matters.

Mr. Smith's previous positions include: assistant publisher at Pacific Press, president of B.C. Hothouse Foods Inc., and various senior positions at Loblaw's companies including vice-president labour relations, North America and president, Kelly Douglas and Co. Ltd.

Mr. Smith has held directorships with the Health Employers Association of B.C., Vancouver Coastal Health Authority, Planned Lifetime Advocacy Network, and the Plan Institute, an independent family support agency and a developmental institute focused on the long-term support of intellectually impaired adults.

*Source:*  
<https://news.gov.bc.ca/stories/bc-appoints-new-container-trucking-commissioner>

## Introduction of Mr. Andy Smith by Mr. Bob Wilds

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I have had the pleasure of knowing Andy Smith since the early 1980s.

Andy has had a long and very successful career in Human Resources, Labour Relations and Management at the most senior levels.

He has provided his expertise in a variety of industries.

At Pacific Press in addition to leading the negotiations he was instrumental in their ability to establish their new printing facility

He was heavily involved in labour relations in the food industry at Loblaws and later became Chief Operating Officer at Western Growers where he oversaw a \$3.5 Billion operation.

Andy was also engaged in many areas in the forest Industry with his activity with Interfor that included Labour Relations, Aboriginal Affairs and acting as senior advisor to the President.

In 2007 Andy became President and CEO of the BCMEA where he led the industry to an unprecedented 8-year collective agreement that has allowed the industry to market their services to the international market place and has provided long needed stability to Canadian Importers and exporters.

He has also overseen the establishment of a state of the art training centre where longshore employees are provided with training in a multitude of skills required to service the Industry. This has allowed for this training to take place without impacting the day-to-day operation of his member employers.

In late 2014 Andy was approached by the Minister of Transportation and Infrastructure Todd Stone to determine if he would be interested in considering the position of Commissioner for addressing the issues surrounding the Container truck drayage operations in the Port.

Never one to shy away from a challenge, Andy with the permission of his Board of Directors accepted the position of Commissioner and served in that capacity until his recent resignation.

Please join me in welcoming Andy who has agreed to speak with us this morning concerning his time as Commissioner.

# Mr. Smith's Remarks

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## Reporter's Note

*Mr. Smith spoke without slides or text for 45 minutes and answered questions for 30 more minutes.*

*This report relies on an audio recording. Passages in "quotation marks" are verbatim.*

*Elsewhere, the report closely paraphrases the speaker's remarks as delivered in the first person, aiming throughout to convey the speaker's meaning unblunted.*

*The drayage sector is complex as to both physical logistics and institutional framework, with a convoluted history. To aid understanding, the reporter has added:*

- *terms and abbreviations used (opposite)*
- *topic headings shown in Table of Contents (above)*
- *explanatory words in the remarks [in square brackets]*
- *footnotes with related facts in the speaker's remarks, and*
- *timeline of recent events in drayage (in the Appendix)*

*The speaker has reviewed the report.*

*Errors and omissions remain the responsibility of the reporter.*

## Terms and Abbreviations Used

***Drayage** is the local carriage of shipping containers of various standard sizes by road. Drayage serves industrial sites where containers need pick-up and delivery for storing, sorting, stuffing and de-stuffing, and for transfer to/from long-haul transport by ship, rail or road.*

*In Metro Vancouver these industrial sites comprise 4 main **marine terminals** for trans-Pacific shipping, 2 transcontinental **railroad yards** (of CN and CP) and numerous other road-accessed **off-dock** sites such as warehouses, transload centres and storage yards.*

*Trucking firms i.e. **full service operators** or **FSOs** sell drayage to their customers who are **cargo owners** (or their representatives such as freight forwarders). The full service operators may employ (1) drivers to operate the firm's trucks, and/or (2) **owner-operators** who supply and drive their own tractor unit.*

*For a truck to enter port property it must hold a licence under a **Truck Licensing System (TLS)** administered by Port Metro Vancouver (**PMV**). Currently 97 FSOs have truck licenses for their own trucks or for trucks of the owner-operators they sponsor. Under current laws and regulations, trucking firms must pay their drivers and owner-operators at **regulated minimum rates** per driver-hour or per trip.*

*The **container trucking commissioner** is empowered under the **Container Trucking Act (CTA)** to issue, modify and cancel such licences and to police FSO's adherence to regulated minimum pay rates, including imposition of penalties.*

## *Mr. Smith's Remarks*

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Good morning.

To be successful in the labour relations business, one needs self-assurance and confidence, self-awareness, and sensitivity to the needs of others. It is important who you think you are, and who others think you are.

Self-awareness is also important for companies, governments and agencies. In today's world "the issue of legitimacy of capitalism and of business is up for grabs." Large emerging issues, such as global warming, and income inequality in society are becoming more and more worrying. Dealing with them effectively depends on how business and government are viewed by the public.

There is disturbing news emerging from the Volkswagen [tailpipe emissions] scandal. Look at the failure of significant industries [in BC and Canada] to get projects completed. In this province and this country our dynamic is weak: we are not doing a very good job.

As regards my most recent adventure as (now ex-) container trucking commissioner, elements [of our weak dynamic] come to the fore.

### **A Picture of the Drayage Sector**

In the last 15 years drayage has become a vital part of the supply chain serving both importers and exporters such as Walmart and Canadian Tire, Toyota and General Motors. The forest products trade has become reliant on drayage as well, as they are now commonly containerized for export.

The drayed portion of container traffic is 25 -35% of some 3 million containers in total passing through the Metro

Vancouver gateway [the rest transferring directly on-dock between rail and ship without travelling over local roads].

"The drayage system is characterized by the inability to provide service which is uninterrupted, professional, and respected and that provides the structural integrity to the transport system that is needed to attract investment and a sense of security among its customers."

Those qualities are vitally important. For instance, with the BC waterfront longshore workforce, we<sup>1</sup> landed an 8-year collective agreement. The effect astonished me: this achievement quickly communicated to me that labour stability created confidence and drove investment.

In contrast, the drayage sector has had three significant labour disputes in the last 15 years. They were lengthy: there has never been a longshore dispute that lasted anywhere near that of the drayage sector: the last one in spring 2014 lasted several weeks.<sup>2</sup> Although the stoppage affected only a portion of the container movement, its ill effects continue to this day.

"When I first heard about it, the conception of how the drayage sector operated seemed somewhat cartoonish. There was an image of a large sector operating in a wild west environment, with rampant rate cutting and unsavoury behaviour: the margin sacrificed to trap business was recouped from the pay packets of the drivers themselves." This is something that certainly should not happen in a country like Canada, and especially in a signifi-

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<sup>1</sup> Mr. Smith is President and CEO of the BC Maritime Employers' Association. The BCMETA bargains with the longshore workforce.

<sup>2</sup> The Appendix is a timeline of events starting with the drayage drivers' strike of February-March 2014.

cant industry. “This goes back to the question of who we are, what we see as positive Canadian social values that should adhere to any industrial effort. But there was an element of truth to this picture—just an element.”

Until the formation of commission, these were the major players that were trying to make sense and bring peace: the federal government through the Minister of Transport, the Port of Metro Vancouver, and the Province and elements in the drivers’ sector which had a generally positive impact.

### **Labour Organization in the Drayage Sector**

The status of organized labour in the drayage sector is shaky. The Teamsters have two certifications. The union is stable and well run. The local leader was a truck owner-operator himself and they enjoy a stable relationship with collective agreements in place with their employers.

There is also Unifor Local 4000, which looks after CNTL Trucking employees. Again there is a collective agreement in place and a stable environment—the sort of thing you want to see in terms of structure.

However, another Unifor unit representing 6 of the drayage companies is a rather sadder tale, with a marked inability to conclude collective agreements. They were a leading light in the last dispute, when we were treated to the national president of Unifor coming to BC publicly to defy the back-to-work order. “This is not the sort of thing which gets us to a place where we can do business in a mature way—not what we want as drivers, investors, or operators, where we can look forward to an industry where we can justify expending our blood, sweat, tears and money to make it work.”

There is also a roster of smaller unions (such as CLAC). Other than the signal difference between Teamsters and Unifor 4000, the rest are not a happy tale. In a sector like drayage you look for the institutional architecture that can give you ways of dealing with problems—of making sure that the compensation is adequate, of making sure that there is a certain sense of stability and maturity.

On another planet, another Andy Smith is happy to say there are great things happening. For example, we are seeing formation of an employers’ association which would represent employers of some 900 dray drivers and 55 companies in bargaining of a sort with the UTA—the United Truckers Association—which is not a union per-se but represents the largest single group of drivers.

In labour relations, we are captive to an element of chance in whom the democratic process (within the labour movement) throws up. One is always looking for a person that you can talk to, that you can deal with, with a sense of being in a long marriage.

Commercial bargaining and collective bargaining are very different. In commercial bargaining, you can walk away from a deal. But not in collective bargaining: you are joined at the hip and everywhere else. The characteristics of the person across the table are fundamental to you. Over the last year or so a very interesting young man, Gagan Singh the leader of the UTA, came to forefront after the collapse of the strike. I saw him as someone I could work with.

### **Joint Action Plan of 2014: Retroactivity Issue**

So overall, the drayage sector was disorganized as regards employee (or drivers’) representation, and also was non-organized as to employers. Therefore, the advent of

an employers' association was extremely positive. In a sensible world I would be telling you about that association today—telling you how UTA had taken forward the Joint Action Plan, which was the last deal put together somewhat hurried in the last dispute.

In my first month as Commissioner<sup>3</sup>, the UTA made it clear that retroactivity was not a big deal to them. Rather, they wanted work and some certainty: the same as the employers. This was music to my ears. As the Commissioner I had powers to change rates and regulations by way of making a submission to cabinet. I made it clear that if there was some part of this deal (the 14 point joint action plan) that was unworkable and unfair, then they could make a submission to me; then if I was persuaded of its efficacy I would turn to cabinet and ask for these changes to be made. I thought this was a matter-of-fact way to proceed. "I know that a deal is about a joining of interests, a trust of what has been come to, something that both can grudgingly live with. Generally, such deals don't come out fully fleshed at 4 am in the morning. I saw the Joint Action Plan as rough-hewn and not fitting the operational and fiscal realities of the sector. So my role was to see what the players were and what the geography was like, as I thought significant changes would have to be made."

But make no mistake I had the rules and regulations within the enabling legislation and they had to be enforced through an audit process which the Commission commenced with immediately

Ninety-seven drayage companies ultimately got PMV licences to service the port. We had a wide range of

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<sup>3</sup> Mr. Smith was appointed Commissioner on 2 February 2015.

businesses. I believe I actually visited 25 in person, big and small. One of the amazing things was that many told me that I was the first guy that had been to visit them. Here is a sector that has been regulated to death to palliate the drivers—without a hands-on conversation.

I had some interesting meetings with groups of up to some 200 drivers. I got a good sense of whom I was dealing with. I was optimistic. There was a pre-existing scheme: I found a director of operations and a registrar [for my office]. We had a backlog of audits. I understand now they [in the commissioner's office] have completed auditing about 10 trucking firms: some 6 firms were found in contravention of regulations, and had to pay up. My inclination was not to fine people, [rather] to get the Joint Action Plan implemented but at the same time foster the institutional architecture to proceed.

#### **Why Mr. Smith Is Ex-Commissioner<sup>4</sup>**

"What happened? All I can tell you is that in everything I did I made sure my minister was completely up to speed. Everything seemed to be going very well."

We recovered \$157,000 from one company. My real focus was on the future to ensure that those positive elements were nurtured and made most effective.

I foresaw making a submission on the elements that were not business-like. I was interested in bilateral submissions including both company and drivers. I thought that if someone wanted to talk about rates, I would be more interested in bilateral submissions that included both the employers and the drivers through their unions or organi-

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<sup>4</sup> Mr. Smith resigned on 15<sup>th</sup> September 2015. See Appendix for related events.

zations. I saw this as being iterative, that would meet the various tests that would be required. In my experience I might send them back to do homework to get something that was satisfactory to me, and then I would take that to government.

But that did not happen. “At some point in this process it was made clear to me that the road to bilateral, cooperative, sensible ways forward was not in the cards. At that point *yours truly* said: this is not ‘settlement bingo’. I know what I am doing. I don’t suffer from doubts in the night. I was very gratified by what I saw as a willingness to move this industry forward” on the drivers’ side in the person of the leader of the UTA organization.

At my suggestion he spoke to the Teamsters, CLAC and Unifor 4000. With the exception of Unifor [VCTA] they all supported this move. The UTA and the employers were proposing to set aside retroactivity and replace it with a 6-year deal, with cost-of-living increases going forward, and some rudimentary seniority provisions. “Someone has to persuade me that there is any better solution than this. If there’s anything that frustrates me deeply in this it’s that a democratic solution, a business solution, has been kicked in the gutter. We are going back to a form of management by edict, and that doesn’t work. There have been edicts in this sector for 15 years and it hasn’t dealt with the problem. That’s why Andy Smith is the ex-commissioner. It goes to this notion of self-awareness and, quite frankly, moral authority.”

That’s the challenge to our institutions today: they have to demonstrate the moral authority to do business. What does that mean? It means that the fundamental principles that we all live by, in our democratic society, are reflected in our business dealings. That means we are boy

scouts or girl guides: we play by the rules, do our best, do business, create employment and wealth and do what we have to do for Canada.

I think that on a broader scale, the scandal at Volkswagen has undermined the moral authority of business. In the rather abrupt reversal (of my approach as commissioner), it seems there is blindness and a lack of self-awareness about the responsibilities of government and its agencies. In the drayage sector, no one is innocent: the drivers the employers, Port Metro Vancouver or either level of government—everyone carries the can for this one.

But so what? We had an opportunity to right that failure to progress. It seemed to me there was a fairly straightforward process: you had an authority figure (me) or “the wage nanny” for the sector; you were able to say “yes” if you can demonstrate to me that you have a broad constituency of support on the employer side and (on the other side) the UTA representing some 25% or 30% of the dray drivers. If you want your deal to be 6 years and cost of living, that is something we all could benefit from. Most significantly this had the support of the mature labour unions—Unifor 4000, Teamsters and CLAC. But this opportunity was wasted. We are now back to where we were before the last dispute.

### **On the Fleet Reduction Process**

Coming out of the Joint Action Plan was the notion of there being too many trucks [deployed in drayage]. That may be true—but nobody knows. Port Metro Vancouver came up with the number of 1454 trucks [needed in drayage]. They got that from [an analysis by] KPMG. “I found it appalling, that family businesses built over 20 to 25 years, with 25 drivers, a yard, a shop and an office, were

simply thrown to the side in a process that was found ultimately by the court to be at the very least unfair—unworkable.”

“In the arena of administrative law it is quite unusual for the courts to get their hands in, and start messing about in what they see primarily as an arrangement between private parties. But they did. When we look at the first step coming out of the Joint Action Plan, we find a process that was found by the courts to be unfair.<sup>5</sup> Where is the moral authority in that? It’s easy to say ‘all these south Asians, you know what they are like’. I heard that a lot. It disgusted me. This is Canada. These are business people. They deserve our respect for their effort, for their work, they deserve a much better treatment in this first iteration of fleet reduction.”

“I’ve done reductions in my time, restructured Loblaw’s on the wholesale distribution side, consolidated 30 warehouses into 6, laid off a few thousand people. I did the same thing at Pacific Press... It can always be done in a humane way, in a way so that even if people are getting the sharp end, they can say in the end that it is what it is, but I was treated fairly. And it’s also important for the people who survived the process.”

“The process of fleet reduction was disappointing. What I found very interesting was, as I thought about what was coming out of the court case: they cannot hold their position (on the method of fleet reduction). My concern was

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<sup>5</sup> In April 2015 the Federal Court of Canada issued its decision after a judicial review of Port Metro Vancouver’s process for selecting container trucking companies licensed to serve the port.

that this would just add a layer of social dysfunction to the process.”

Before I was involved with the commission, I met with the parties, spoke with counsel for the drivers, and “put together a settlement that would have brought the drivers back, created a use-driven scheme to reduce the fleet: i.e. if you couldn’t use the tag (licence for the truck) you would lose it—an organic shrinking of the fleet. The lawsuit would go away and there would be no feeling of unfairness. It is very difficult to talk to someone about how they should behave themselves when the institutions under which they do their business do not have the requisite moral authority to convince people they are being fair. That wound doesn’t heal. Not the way to induce fair play. My efforts were summarily dismissed. I was told they had a winner and they didn’t want to lose the farm.”

### **Returning the Moral Dimension to Business**

Especially for the students here: you are not part of the boomer generation with a silver spoon. You have a tougher road to hoe. The way we do business and the way that employees in the institutions feel about those they work for, are significant. We live in this bubble of pillow-soft politics in North America. It’s coming to an end. There is something happening in North America. You cannot survive today’s wage differential [between rich and poor], and the perception of it.<sup>6</sup>

Our institutions need to meet the challenge of moral authority. The days of saying ‘I have invested this large number [of dollars] and it’s going to create a small num-

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<sup>6</sup> Here Mr. Smith related a story of his encountering a typical youth in a remote part of the US who, significantly, was acutely aware of the “Occupy Wall Street” movement.

ber of jobs here: so shut up'—are gone. Young people who are going into business have to recognize that. We are moving into an arena where there has to be social value as well as commercial value.

Look at the drayage sector and the notion of a commitment from the sector to [move to] more traditional ways of doing business, of problem solving and conflict resolution. Opportunities come up [for resolution] — and they go away. The [young leader of the UTA] has had it. We sit around and cry in our beer. He's done. The next person is not going to be as workable or useful.

The days when business could be done with really no concern for this moral dimension are over. Managerial elites began to move away from that concept particularly in the early 1980s: we have had a 30-year run, now com-

ing to an end. In the drayage sector you have a micro-cosm of what happens with the institutions that are meant to serve the sector and to create positive conditions for future employment and investment: you can see how damaged [the sector] can be by ham-handed institutional or government intervention.

We don't have time to pretend it's 1985 anymore — it's 2015 and a different world. If you want to see how bad things can become simply because decisions are made which are not well thought out, just look at the drayage sector. It's a shame.

I hope I have really brightened up your morning. I'd be happy to address any questions you have.

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## Questions from the Audience and Answers by Mr. Smith

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**Question** from *Dick Hampton*, former manager of logistics at Interfor, member of CILTNA Pacific Chapter Executive.

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### **Is throughput in drayage any better now?**

*In my working life I developed empathy for some trucking companies. They make money by rolling their wheels, not by staying at the terminal. I never understood the [reason for the] imposition of [minimum] rates. I can maybe understand [the need to have] fewer players [in terms of the number of trucks]. My question is: is the throughput any better today than on than in 2003 and, if it isn't, what needs to happen in the port?*

**Answer:** I was involved in a couple of attempts to get things straightened out: people approached me to help in November [2013], the year previous to the last dispute.

We put forward a 4-point plan so we wouldn't have a dispute. One of the issues was wait time: sometimes [trucks] would be waiting 2, 3 or 4 hours just to get into the terminal. They [PMV] said there was a reservation system: there was a staging area, and the truckers would have a reservation time and before that time you weren't allowed to be in the area. But there was poor discipline [in operating the reservation system]. Some drivers were showing up 4 hours before the reservation, because they thought that if they hung around maybe they could get in (and some did).

The two-hour reservation is not a window: [it is too wide] it's a guess. Part of the problem is that the port has been forced into role of manager. They are regulators not managers: a regulator administers a book of rules; a manager deals with administrative challenges as they arrive, responsively. They are two different ways of doing business. The port was brought into this mess in the first big dispute in 1999. Because there were a lot of people with picket signs it was seen as a labour dispute. It was not a labour dispute: in fact it was a demonstration, but they characterised it as a labour dispute. Yet the guys with placards weren't in a union.

Groups of suppliers cannot get together and determine prices: that's collusion. They were in legal no-mans land. This is when the first fatal error was made. When a number of employers tried to bring this to court, the federal cabinet responded with an Order-in-Council which gave them a bye – a waiver in the application of the Competition Act. This created a monster: a group who could strike and bargain but with no rules or legislation. There is no agreement in place or machinery such as representational validity, no strike notification requirements. Those of us in the labour relations business shook our heads—we couldn't believe it. We are still haunted by it.

**Question** by Margaret Nadeau, final year student UBC Sauder School of Business:

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**What is one thing would you change?**

*If there is any one thing you could change, what would it be and why? What is the most pressing issue?*

**Answer.** The most pressing issue is lack of structure: institutional architecture. You need to have an employers' association because there are so many employers in-

involved. You also need either one big union or a group of unions. That takes you to a place where at least you can have access to the processes available to settle disputes. In this situation it needs to be resuscitated and applied.

There shouldn't be a commission: I'd hoped to be the first and last commissioner. The system should ultimately self-regulate: it's a trucking business after all. In the food distribution industry, trucking needs none of the structures imposed by PMV. "In order to have the privilege of driving onto port property the port charges each dray company \$2250 per year per truck. Where did that come from? To a particular frame of mind, it sounds great: it's OK if you are sitting in a fine office in downtown Vancouver, sticking [a firm with several trucks] to the tune of \$50 or \$60,000 for the privilege of driving onto port property. Where is the value proposition to industry to extract \$10 million/year for the privilege on driving onto their property? I could never quite grasp that. They do it because they can." When you see a big semi backing into your grocery store, no one is charging the trucker for the privilege of serving their customer.

"This is being done to an industry which has problems paying its drivers an adequate wage. How does extracting \$10 million/year make it easier for them to pay a proper wage?"

"PMV were dragged into this – they are ill suited to do it. They don't have proper impulse to make it work."

**Question** by Colin Laughlan, Logico Carbon Solutions Inc

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**Are there not better solutions through information technology?**

*Is the current agreement sustainable – if its not – are there still court challenges? How will it work as trade increases, as cuts have been made (to the fleet)? Secondly is it time to look at solutions through different a lens – using different operational models. Technological advance means data could be transmitted in real time through collaboration among partners. The reservation system and contingencies could be looked after. Technical solutions could help navigate some of the complexities of the operation.*

**Answer.** Systems used by marine terminals today are fairly primitive. They are where grocery systems were 20 years ago. Marine terminals are looking at a limited number of SKUs [stock keeping units]: the grocery business may have 70 or 80000 SKUs in a high velocity warehouse. They have to know where high and low turnover items are. There are lots of technological solutions crying out to be done. But because of the landlord [PMV] is involved in day to day operation of companies....where is their expertise in setting up a reservation system? Plus, the discipline of the reservation system was not properly discharged. Certainly not at Vanterm. There are tremendous opportunities for technological advance. Industry cries out for sophisticated solutions.

How many trucks are needed? There is tremendous seasonality. It's not a fixed number. It's assumed truckers are picking the pockets of their drivers because of

margin shrink, so there must e too many trucks. Are there? Maybe so.

Industry has changed significantly over last 10 to 12 years. There used to be 500 to 600 000 containers per year, mainly import. Now on both the import and export side there is a transshipment function where there are clusters of large cross-dock operations [within the gateway region], loading and unloading containers of different sizes. There are many functions, making it a complex matrix. Look at the Joint Action Plan and the "Ready Rates": the matrix units are municipalities. It's a big sieve. One of things coming out of an arrangement between UTA and employers association was a new, finer matrix using postal codes with a much finer grid: using Google to get timings in minutes [between an origin and destination] and backing into rates per hour. Presto: you have ways of paying drivers far more reflective of the on-the-ground realities.

The current situation is unsustainable. The business of retroactivity is morally unsupportable and legally iffy. Some [of the trucking firms] are sophisticated well-funded business people and they aren't going to take it lying down. They are looking at looking at bills of \$100,000's by government fiat, and they have no way to recapture those funds.

Plus the fact you have their customers (for example large forest companies) who know that there is a strong line of cases which say: if there is a claim against a trucking company, which cannot meet that claim, the claim goes to the beneficial cargo owner. Now there's a real incentive to do business in PMV!

The retroactivity issue may bankrupt several companies. They have already charged for the trip based on what

[rates] they were paying at the time. So do you send another invoice to the shipper who's already paid the bill? Are you coming back for an extra amount two years later? It means another period of uncertainty. People only go to court if other avenues have failed. Uncertainty is going to cost. If you talk to large retailers doing business through PMV they say it is taking more days to get a container through the system than two years ago, and costs are up.

What is also happening is the container drayage sector is being predated on by break-bulk. 25 tomes of pulp fit in a 40-foot container. A few months ago \$5 to \$6 per ton or \$150 per container was the cost advantage to pulp of break-bulk over container. Cash is being extracted from the wallets of dray operators, reflected in higher dray rates, which have overtaken break-bulk rates. So now we are seeing migration of forest products out of containers into break-bulk.

Also, Seattle, Tacoma and Everett are very hungry and are beginning to make inroads into the export container business. We are driving business out of Canada into the US.

**Question** by Toni Nardi, CILTNA Pacific Executive

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#### **How do you deal with an outlier union?**

*About the employers' association model: are you confident in time that you could get the majority of unions on side. How would you have dealt with an outlier like Unifor?*

**Answer:** An arrangement with the UTA would deal only with the UTA. Everyone could see you have a framework agreement. What is so frustrating is that you had a solu-

tion emerging organically from industry itself. The deal was always that it would only apply to the people who wanted it. I said to the leader of the UTA: the UTA is neither fish nor fowl, so they have real problems in terms of representation – agency issues. A trade union has that already built in – the leadership can sign for members. But if you are not certified you cannot sign for members. So maybe you will have to get all individuals in the organization all to sign off individually. It's not unheard of. You'd need to get them a lawyer so they know what they are doing. Complex but doable. It was never meant to be that access to retroactivity [retroactive pay] would be removed from everybody because of UTA. The Teamsters don't want retroactivity. They understood how cockeyed retroactivity is.

I am very concerned that the good guys in industry will be forced out and we will be left with operators who are not interested in playing by the rules. It's interesting that one of the provisions for issuing new licences was that you were supposed to be squeaky clean in terms of prior offences, in terms of payment of wages. But that was not the case. Licences were granted to people who had significant findings against them for a kind of stealing from their employees. Bad money chases out good money.

**Question** from Marian Robson, Chair of CILTNA Pacific Chapter.

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#### **You had a negotiated agreement?**

*You said you had negotiated agreement on both sides....*

**Answer:** I was commissioner. I was judge I didn't negotiate or mediate anything, I would tell them about ways of doing things. I didn't negotiate anything, but I indicated the way forward.

**Question from Oksana Exell, WESTAC**

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*What happened? We had great confidence. You walked out and disappointed us. Your confidence would have seen us through this mess....*

**Answer.** There is a whole other part of his story. It was a very difficult decision for me to resign. I met many people I liked and had respect for and I feel I let them down but I was put in a position where I didn't have an option.

**Comment from Gordon Payne, member of the CILTNA Pacific Chapter Executive:**

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**Towards an employer association?**

*I applaud you for being so open about what's really taking place in this industry. I am an old waterfront guy who happened to get into the trucking business late in my life – running Harbour Link today. I would like people in this room to know that we as a company have tried to bring this fragmented industry together in the formation of an association. The hurdle we found was not in bringing the trucking industry together... but our problem was the interface with big brother. The Port of Vancouver was not prepared to sit down and talk to us. The terminal operators outright refused to talk to us. The thing we wanted to talk about was how to improve the turn times at the*

*port: as you said it was taking between 2 and 4 hours to get a truck through the port. They would not talk to us about that: they refused to sit down constructively. So what happened? The drivers said we cannot do this any more. We cannot work on the basis of wait half of our day to pick up a container. They went on strike, and for all the right reasons. No one was paying them: their wages were in the tank. What money they were getting was spread over a lot more hours. That's what led to this strike. And it was resolved with a whole pile of things that big brother imposed on an industry which it did not understand. I am glad today that Andy was appointed. I feel you were doing a tremendous job. In a difficult way you were the judge and jury who had to decide what to recommend.*

*The end result was big brother decided he didn't like your way. I think we have to find our own solutions in a very commercial way that recognizes the value of labour, service and the importance of working together. The non-union and most other union recognized the importance of that kind of partnership. Thanks to you our association is resurrecting itself and may be of use to the next commissioner.*

## Timeline of Events in the Drayage Sector

Date	Event
2014 Feb 26	Drayage drivers' strike starts. A substantial group of unionized and non-unionized container truckers stop serving Port Metro Vancouver (PMV).
2014 Mar 6	Federal Minister of Transport <b>Lisa Raitt</b> appoints <b>Vince Ready</b> and <b>Corinn Bell</b> , who are appointed to conduct an independent review of the issues that caused the drivers to cease trucking at PMV. Minister also asks the drivers to return to work at this time, but most refuse.
2014 Mar 24	Province tables back-to-work legislation.
2014 Mar 26	A Joint Action Plan (JAP) follows March 12 interim recommendations of <b>Ready</b> and <b>Bell</b> . Meeting occurs among Unifor ( <b>Jerry Dias</b> ), UTA ( <b>Harman Shergill</b> ), the Province ( <b>Premier Clark</b> ) and Federal Government (Director General <b>Mike Henderson</b> ). JAP sets out plans "to help ensure truck drivers are paid fair compensation" and establishes the need to reform the Truck Licensing System.
2014 Mar 27	Strike ends. Drivers return to work after approximately four weeks.
2014 Apr 3	Federal government issues Amendment to Port Authorities Operating Regulations under Canada Marine Act. The amendments implement the regulated trip rate 12% increases as per the JAP.
2014 Sept	<b>Ready and Bell</b> release Recommendation Report. Report finds there to be an oversupply of trucks licensed to access PMV facilities and that this factor had led to a widespread practice of rate undercutting. Among a number of recommendations, Mr. Ready proposes reforms to the Truck Licensing System [TLS] under which truck access to the port is authorized.
2014 Oct 5	Governments unveil "new model" for Drayage Sector. Governments of Canada and BC announce "actions that will be taken to strengthen Port Metro Vancouver's position as a world class port by creating the conditions for an enhanced and efficient drayage sector where the number of container trucks serving the port better meets market demands." PMV releases a Fleet Size Analysis Report projecting an annual trip volume of 1,176,750 to and from port facilities. Based on a target of 6 trips per day per truck, the optimal number of authorized trucks is determined to be 1388. This fleet size is said to require a reduction in the number of licensed trucks by about 610.

2014 Nov 17/18	Container Trucking Act: BC Legislature debates and passes Bill 5 at third reading.
2014 Dec 19	Container Trucking Act is brought into force “to provide fair wages and working conditions for truckers and to ensure efficient operation and global competitiveness of Port Metro Vancouver.” (BC Transport Ministry Press release)
2014 Dec 22	Compensation provision released in Container Trucking Act Regulations. Part 4 Division 2 of the regulation provides for back pay for container trips made on or after April 3, 2014:
2015 Jan 28	Province announces new compensation rates, clarifies not needing to be implemented until regulations are changed. The January 29 announcement concerns the following changes: Eliminate the \$50 rate for moves within 5 kilometres: Eliminate the \$40 trip rate for employee drivers: Eliminate hourly rate pay provisions for owner-operators. In addition, the Ministry of Transportation and Infrastructure committed that the Trucking Commissioner will review round trip rates.
2015 Feb 2	Province appoints <b>Andy Smith</b> as Container Trucking Commissioner under the Container Trucking Act. Minister states that “Mr. Smith will support the mandate of ensuring long-term stability in the sector by: <ul style="list-style-type: none"> <li>- Assuming responsibility for all Truck Licensing System licences in place following the licence reform undertaken by Port Metro Vancouver</li> <li>- Establishing, and then consulting with an Industry Advisory Committee on issues relevant to the sector,</li> <li>- Setting any future rates moving forward based on consultations with industry and the Industry Advisory Committee,</li> <li>- Having oversight of the Whistle-blower line, investigations and enhanced auditing and enforcement.</li> </ul> <p>By appointing the province’s first container trucking commissioner, government is meeting its commitments under the March 2014 Joint Action Plan and is acting on recommendations made by mediators <b>Vince Ready and Corinn Bell.</b>”</p>
2015 Mar 1	Province enacts Container Trucking Regulations
2015 Apr 22	Judicial Review results released. On April 22, 2015, the Federal Court orders PMV to review applications from 28 drayage companies that were denied Truck Licensing System licences in early 2015.
2015 May 13	Provincial Cabinet revises Container Trucking Regulations. Changes clauses on minimum rates per trip and per hour, minimum pay for 4 hours’ work.
2015 Jul 17	Unifor complains to commissioner that back pay provisions are not being enforced.
2015 Aug 4	Unifor files Petition with Supreme Court of BC, seeking to set aside Commissioner’s “July 20 decision” (asserted by Unifor to have been made by Commissioner not to act on complaint of Unifor) and enforce back pay provisions of

Container Trucking Act regulations. Also asserts an apprehension of bias on Commissioner's part due to his role as President and CEO of BC Maritime Employers' Association.

2015 Aug 10

**Minister Stone** reminds commissioner of his responsibilities under the Container Trucking Act. The key items Minister Stone lists are:

- Enforcing the Act and its regulations, including fair remunerations for "truckers"
- Using all available remedies to address non-compliance by licence holders, including retroactive pay requirements
- Ensuring transparency, including by posting the results of audits on the Commissioner's website.
- Encouraging the Commissioner to appoint a Deputy Commissioner
- Providing an Annual Report for 2014/15 by August 31, 2015
- Providing conclusions, through continued engagement with affected parties, regarding the efficacy of the existing regulatory framework, including the initial rate regime
- Balancing the Office's budget and providing a projected balance budget for the upcoming fiscal year (and two subsequent fiscal years)

**Minister Stone** expresses the opinion that completion of the steps above are crucial to the long-term stability and competitiveness of the container trucking industry.

2015 Sept 15

**Commissioner Smith** resigns. Minister issues statement in recognition of the resignation of B.C. Container Trucking Commissioner Andy Smith on Tuesday, Sept. 15, 2015:

"Today, I received a letter from Andy Smith, informing me that he is resigning from his position as Container Trucking Commissioner, effective immediately.

2015 Oct 6

Transportation and Infrastructure **Minister Stone** names **Corinn Bell** as Acting Trucking Commissioner and **Vince Ready** as Acting Deputy Trucking Commissioner for a 6-month period. He also names **Elena Miller**, who is currently legal counsel and adjudicator for the Labour Relations Board and the Employment Standards Tribunal, as an additional resource to the Commissioner's Office.

*Timeline prepared from online sources  
by **Martin Crilly** as reporter*

## Participant List

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Ryan **Anderson**  
Harbour Link Container Services Inc.

Karen **Barre**  
Montship Inc.

Michael **Bean**  
Student – UBC

Dave **Bedwell**  
COSCO Canada

John **Bourbonniere**  
Harbour Link Container Services Inc.

Stephen **Brown**  
Chamber of Shipping of BC

Patrick **Chen**  
Evergreen Shipping Agency (America) Corporation

Tiffany **Chen**  
Student – BCIT

John **Collings**  
Collings Johnston

Martin **Crilly**  
MLC Associates

Marko **Dekovic**  
Port Metro Vancouver

John **Dymond**  
BCIT School of Business

Oksana **Exell**  
WESTAC

Bonnie **Gee**  
Chamber of Shipping of BC

Thomas **Gregoire**  
Chamber of Shipping of BC

Dick **Hampton**  
RFH Logistics

Chris **Hoff**  
Transport Canada

Caspar **Huang**  
Student – BCIT

Roy **Huang**  
Student – UBC

Ryan **Hubines**  
Student – BCIT

Nicole **Jones**  
Student - Capilano

Shakir **Khan**  
Student - Capilano

Ameera **Ladak**  
Student – UBC

Kleo **Landucci**  
Ashcroft Terminal

Kelly **Lim**  
Student - Capilano

Stephen **Majetic**  
Freedom 55 Financial

Madeleine **Marshall**  
Student - UBC

Margaret **Nadeau**  
Student - UBC

Tony **Nardi**  
Neptune Terminals

David **Payne**  
Harbour Link Container Services Inc.

Gordon **Payne**  
Harbour Link Container Services Inc.

Jasper **Rickmers**  
Student – UBC

Marian **Robson**  
Global Public Affairs

Greg **Rogge**  
Port Metro Vancouver

Roya **Salehzai**  
Student – Capilano

Joe **Sulmona**  
Sky Blue Sea Enterprises Ltd.

Joyce **Tang**  
Student – BCIT

Justin **Tiu**  
Student – UBC

Heydon **Vargus**  
Student – BCIT

Chris **Wellstood**  
Port Metro Vancouver

Bob **Wilds**  
BC Marine Terminal Operators Association

Kimberly **Wong**  
Student - UBC

Wu **Xu**  
Secretary, Pacific Chapter

Peter **Xotta**  
Port Metro Vancouver

## The Organizers

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### CILTNA Pacific Chapter Executive

Marian **Robson** (Chair)  
Xu Wu (Secretary)  
Martin **Crilly** (Chapter Treasurer and Reporter of  
Mr. Smith's Remarks)  
George **Adams**  
Darryl **Anderson**  
John **Dymond**  
Bonnie **Gee**  
Dick **Hampton**  
Tom **Maville**  
Jane **Mclvor**  
Gordon **Payne**  
Bob **Wilds**  
Chris **Wellstood**  
Kelly **Couper** (Admin Asst.)

### Students and Faculty

#### **Capilano University**

Azita **Shafai** (faculty coordinator)

#### **BC Institute of Technology**

John **Dymond** (faculty coordinator)

#### **BC Institute of Technology Marine Campus**

Jeff **Otto** (faculty coordinator)

#### **University of BC**

David **Gillen** (faculty)

Michael **Bean** (assembler of proceedings)

Madeleine **Marshall** (thanker of speaker)

Margaret **Nadeau** (questioner of speaker)