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Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

Rui M. Fernandes
Partner
416.203.9505
rfernandes@grllp.com

Gordon Hearn
Partner
416.203.9503
ghearn@grllp.com

Kim E. Stoll
Partner
416.203.9509
kstoll@grllp.com

Carole McAfee Wallace
Partner
416.203.9551
cwallace@grllp.com

Andrea Fernandes
Associate
416.203.9501
afernandes@grllp.com

Conal Calvert
Associate
416.203.9569
ccalvert@grllp.com

Saisha Mahil
Associate
416.203.9547
smahil@grllp.com

Jamal Rehman
Associate
416.203.9819
jrehman@grllp.com

Competition in the Transportation Industry and Recent Amendments to the *Competition Act*

By Rui M. Fernandes

Over the last five years, there has been a rising concern by consumers about the cost of goods and services linked to the transportation industry. The COVID-19 pandemic disrupted supply chains, resulting in increased cost of goods, and also affected services such as air transportation. Air passengers have seen rising costs of air travel. However, there is a rising concern that the increased costs are not solely the result of the pandemic but of anti-competitive behaviour of some players in the transportation industry.

On July 29, 2024, the Competition Bureau launched a market study of competition in passenger air travel service in Canada. Market studies allow the Bureau to look at the state of competition in a market and identify laws, regulations, policies or other factors that may affect competition. Through market studies, the Bureau makes findings and provides evidence-based recommendations on how to increase competition in a sector.

The Bureau noted that the airline industry provides essential transportation for communities across Canada. For many remote and northern communities, air transportation is the only available option.

The Bureau noted that recent developments have raised questions about the state of competition in the industry:

- The domestic air travel market is concentrated with only two major airlines;
- Domestic airfare in Canada appears to be relatively high;
- Canadians have filed more complaints about air travel services in recent years; and

- New airlines appear to face challenges entering the Canadian market.

As a part of its study, the Bureau is examining three key topics:

- the state of competition in Canada's airline industry;
- barriers to entry and expansion; and
- impediments to informed customer choice.

Recent changes to the *Competition Act* have given the Bureau additional information-gathering powers when undertaking market studies.

Recent amendments to the [Competition Act](#) became law on December 15, 2023, following Royal Assent of Bill C- 56, [An Act to amend the Excise Tax Act and the Competition Act](#). The Government of Canada “made amendments to the Competition Act as a part of the ongoing modernization of Canada’s competition regime.”

A new framework under the *Competition Act* allows the Bureau’s Commissioner of Competition or the Minister of Innovation, Science and Industry to initiate a market study, and sets out the framework through which it must be conducted.

There are other amendments of note. The amendments also repealed the efficiency exception under the merger review provisions of the Act (section 96). The *Competition Act*’s efficiency exception, commonly known as the “efficiency defence”, prevented the Competition Tribunal from making an order against an anti-competitive merger where parties could demonstrate that efficiency gains outweighed the merger’s anti-competitive effects. The exception has been removed.

The amendments also restructured the legal test for abuse of dominant position. In some cases, dominant firms act to undermine competitive market forces. Prior to the amendments, an abuse of dominant position occurred under the Act (section 79) when a dominant firm (or group of

firms) engaged in an intentional practice of anti-competitive acts, with the effect of substantially lessening or preventing competition. To constitute an abuse of dominant position, three elements needed to be established: dominance, anti-competitive intent, and anti-competitive effects.

Following the amendments, the Competition Tribunal may make a prohibition order against a dominant firm (or group) if their conduct meets either the anti-competitive intent or effect requirement.

For the purposes of establishing the anti-competitive intent of an abuse of dominance, the *Competition Act* enumerates a non-exhaustive list of acts that may be considered a practice of anti-competitive acts when engaged in by a dominant firm (section 78). Following the amendments, the practice of «directly or indirectly imposing excessive and unfair selling prices» has been added to this list.

In prior amendments to the *Competition Act* in June 2022, drip pricing was expressly recognized as a harmful business practice under the law.

Drip pricing is a sales technique where a headline price is advertised at the beginning of the purchase process, followed by the incremental disclosure of additional fees, taxes or charges. The objective of drip pricing is to gain a consumer's interest in a misleadingly low headline price without the true final price being disclosed until the consumer has invested time and effort in the purchase process and made a decision to purchase. Drip pricing is considered as a false or misleading practice under the *Competition Act*, unless the additional fixed charges or fees are imposed by the government, such as sales tax.

Drip pricing is controversial because it can deceive consumers and distort competition by making it difficult for businesses with more transparent pricing practices to compete on a level playing field. In the transportation industry, for example, drip pricing of unavoidable additional

charges on air fares is outlawed in the European Economic Area, and a similar ban is being contemplated in the United States (where drip pricing is referred to as “junk fees”). The U.S. Congress introduced the *Junk Fee Prevention Act* in 2023 to require merchants to disclose the total cost (including all fees) of an item *prior* to purchase, and in October 2023, the Biden Administration announced several actions to reduce drip pricing and junk fees. First, the Federal Trade Commission (“FTC”) issued a proposed rule (called the Rule on Unfair Deceptive Fees) requiring merchants to prominently disclose the total price of a product or good before the consumer consents to pay, and forbidding merchants from misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices. At least 19 states Attorney Generals support the proposed rule, and the FTC is expected to issue the final rule soon.

In Canada, on September 23, 2024, the Competition Tribunal ordered Cineplex to pay a record penalty of nearly \$39 million for drip pricing. The Competition Bureau found that Cineplex engaged in drip pricing by adding a mandatory \$1.50 booking fee when customers purchased movie tickets online. The Tribunal determined that the representations on Cineplex's website and mobile application constituted drip pricing and that consumers were deceived by contradictory and incomplete information on Cineplex's tickets page. Cineplex has announced it is appealing this decision.

Now that the Competition Bureau is looking at the airline industry with its market study, will it set its sights next on Canadian ports and terminals, rail carriers and ocean carriers? Consumers, shippers and importers have expressed concern about the rising charges imposed by these entities. Detention and demurrage charges have sky-rocketed in the last three years. With the new amendments granting it additional powers, will the Bureau look at these other players?

The United States, in contrast, started looking at detention and demurrage charges at the middle of the pandemic. In June 2022, President Biden signed the [Ocean Shipping Reform Act of 2022](#), marking the first major overhaul of the nation's regulations for the international ocean shipping industry for the first time since 1989. The Act revised requirements governing ocean shipping to increase the authority of the Federal Maritime Commission ("FMC") "to promote the growth and development of U.S. exports through an ocean transportation system that is competitive, efficient, and economical." The bill requires the FMC to (1) investigate complaints about detention and demurrage charges (i.e., late fees) charged by common ocean carriers, (2) determine whether those charges are reasonable, and (3) order refunds for unreasonable charges. It also prohibits common ocean carriers, marine terminal operators, or ocean transportation intermediaries from unreasonably refusing cargo space when available or resorting to other unfair or unjustly discriminatory methods. According to the FMC, ocean carriers collected about \$6.9 billion in detention and demurrage costs from 2020 to 2022.

In the U.S., the FMC has fined a number of ocean carriers for unjustly and unreasonably assessing and invoicing detention charges. For example, it fined Hapag-Lloyd for detention charges to a drayage company even though "it failed to provide equipment return location" and "appointments were unavailable for equipment return during the allocated free time." In May of 2023, Ocean Network Express ("ONE") agreed to pay a \$1.7 million civil penalty to the FMC to avoid a formal investigation. The settlement, which was announced publicly, was reached prior to the FMC initiating enforcement action against the carrier. As part of the settlement, ONE was required to refund or waive the contested detention and demurrage fees to the shippers involved in the case. Although ONE did not admit to any violation of the law, the company committed to complying with the *Ocean Shipping Reform Act of 2022* and the FMC's interpretive rule on detention and demurrage.

As part of its mandate from the *Ocean Shipping Reform Act of 2022*, the FMC recently published its final rule on demurrage and detention billing requirements. It became effective May 28, 2024. The final rule requires common carriers and marine terminal operators to include specific minimum information on demurrage and detention invoices, outlines certain detention and demurrage billing practices, and sets timeframes for issuing invoices, disputing charges with the billing party, and resolving those disputes. The new regulation applies to ocean common carriers trading to or from the US, including vessel-operating common carriers (VOCCs) and non-vessel-operating common carriers (NVOCCs), and to marine terminal operators (MTOs).

In February 2022, it was announced that Canada's Competition Bureau joined the competition authorities of the United States, Australia, New Zealand, and the United Kingdom in a new working group focused on sharing information to identify and prevent potentially anticompetitive conduct in the global supply and distribution of goods.

The working group brings together the Bureau, the U.S. Department of Justice, the Australian Competition and Consumer Commission (ACCC), the New Zealand Commerce Commission and the U.K. Competition and Markets Authority.

In light of pandemic-related disruptions to global markets, the five competition authorities are to share information on potentially anticompetitive conduct affecting global and domestic supply chains. The purpose of the working group is to help identify attempts by businesses to use supply chain disruptions as a cover for price-fixing or other collusive activities that involve competitors cooperating instead of competing with each other.

According to the February 2022 announcement, "[c]ompetitive prices and product choices are vital to consumers and businesses, particularly those struggling to make ends meet in the wake of the

pandemic. Competitive markets also play a key role in driving economic recovery and growth, to the benefit of all Canadians.”

The announcement added “[t]he Competition Bureau will work closely with its international counterparts and will not hesitate to take action against any conduct in violation of Canada’s *Competition Act*.”

As of yet there has been no information released regarding this joint working group’ work.¹

Supreme Court endorses support for airline passenger compensation regime (*International Air Transportation Association v. Canada (Transportation Agency)*)

By Jamal Rehman

On October 4, 2024, the Supreme Court of Canada released its long-awaited decision of *International Air Transportation Association v. Canada (Transportation Agency)*, [2024 SCC 30](#). A primary issue before Canada’s highest Court was whether a federal agency could require airlines to provide compensation to passengers for certain international flight disruptions.

Background

In 2018, the [Canada Transportation Act](#) (“Act”) was amended by the federal government to allow the Canadian Transportation Agency (“Agency”) to make regulations applicable to international air

¹ The Competition Bureau conducted a Retail Grocery Market Study from October to December 2022. One of the submissions received from Loblaw’s noted “the current high grocery prices in Canada cannot be attributed to changing competitive dynamics in the Canadian grocery market. Instead, the driving forces behind high food prices and the current inflationary environment in Canada are the unprecedented increases in supply chain and supplier costs that were fueled by the emergence of the COVID-19 pandemic and weather-related events, both of which were later exacerbated by the impact of the war in Ukraine.” Terminals and carriers were not pointed to.

travel both going in and out of Canada.

In 2019, the Agency adopted the [Air Passenger Protection Regulations](#) (“Regulations”) which provided for standardized compensation programs for international air travel complications, including international flight delays and cancellations, airline-caused flight disruptions, and baggage claims.

The International Air Transport Association, the Air Transportation Association of America, and several prominent air carriers (collectively “Airlines”) challenged the applicability of the Regulations and the provisions therein before the Federal Court of Appeal, arguing that the impugned provisions were inconsistent with the language and framework of the *Convention for the Unification of Certain Rules for International Carriage by Air* (otherwise known as the “Montreal Convention”). Accordingly, they argued that the enactment of the Regulations fell outside of the Agency’s statutory authority afforded to it by the Act.

The above challenge was brought by the Airlines before the Federal Court of Appeal in 2022 and was subsequently dismissed. The Airlines appealed the decision to the Supreme Court of Canada.

Montreal Convention

The *Montreal Convention* is an international treaty which was ratified by member states of the International Civil Aviation Organization in 1999 and formally enacted in 2003. The Convention was conceptualized as a successor to the *Warsaw Convention* of 1929, and served to both respect the principal tenets of the earlier convention while also making some modifications to reflect the modern realities of international air travel. In doing so, the *Montreal Convention* ratified a single, universal framework which governed airline liability globally.

In Canada, both the *Montreal Convention* and its predecessor the *Warsaw Convention* have been codified into law under the federal [Carriage by Air Act](#).

The directive of the *Montreal Convention* remains

to create a universal liability regime of air carriers in the international carriage of passengers, baggage, and cargo by air. Of particular relevance to the case at hand is Article 29 of the *Montreal Convention* which regulates the relationship between the convention's inherent liability regime and the various legislative latticework of national laws which underpins the same. The primary purpose of Article 29, then, is to protect the Convention's uniform liability regime from encroachments by national law, which would serve to threaten its effectiveness and ultimately undermine the protection it offers to international air passengers.

Of its various tenets, the *Montreal Convention* seeks to balance the interests of airlines and international air passengers – it extinguishes the requirement that international air passengers prove fault on the part of an airline to recover damages while simultaneously limiting an airline's liability for any such claims which are legitimately advanced.

The Challenge and Result

The Supreme Court of Canada dismissed the Airlines' appeal.

Writing for a unanimous Court, Justice Rowe maintained that the *Montreal Convention* remained exclusive within the scope of the matters which it addresses, but acknowledged that it did not comprehensively deal with all issues which may arise from international air travel. He clarified that under Article 29, there must be an "action" which leads to "damages" for the exclusivity principle pursuant to the Convention to apply.

It was the Court's position that the above Regulations did not provide for an "action for damages" as they did not provide for individualized compensation. Instead, the Regulations created, in effect, a "consumer protection scheme" which operates in tandem with the *Montreal Convention*, without encroaching or undermining the latter's liability limitation provisions. Accordingly, the Regulations were not found to offend the exclusivity principal codified in Article 29 of the Convention.

The *Montreal Convention* codifies limits for damages for specific injuries (e.g. death, injury, baggage loss). The Court found that the compensation system prescribed pursuant to the Regulations, on the other hand, did not fall within the scope of the above damages.

It was the Court's unanimous position that the two forms of passenger compensation regimes provided by the Regulations and the *Montreal Convention* are capable of running in tandem with one another, without one offending or otherwise encroaching on the other.

Enforcement under the Towing and Storage Safety and Enforcement Act is strict and unforgiving

By Conal Calvert

The new towing regime in Ontario is now in effect with the changes to the [Towing and Storage Safety and Enforcement Act](#) ("TSSEA") and its accompanying regulations in force since January of this year. In response to years of issues in the industry, particularly allegations of criminality as well as dangerous and aggressive behaviour by tow operators, the new regime is appropriately robust but equally unforgiving. Industry players should take note that the Ministry of Transportation's Director of Towing ("Director") appears intent on a strict enforcement of the regime and avenues for appeal are seriously curtailed relative to similar regimes such as that for the Commercial Vehicle Operators Registry ("CVOR"). Though the enforcement regime of TSSEA remains largely untested, the closest parallel is the CVOR system overseen by the Deputy Registrar of Motor Vehicles and helpful insights may be taken from its record.

Potential Ground for Denial of Certificates

The potential grounds for the denial of certificates to tow drivers and operators as well as those operating vehicle storage facilities are broad and

present a potential minefield for applicants with skeletons in their closets and perhaps, more importantly, applicants with associates who may have the same. These grounds can be found in [O. Reg. 167/23](#) under the TSSEA (the “Regulations”).

The grounds for denial are generally divided into two categories – those which can be appealed and those which cannot. The grounds for denial which can be appealed include:

- Prior contravention of the TSSEA or its regulations or a contravention of the *Consumer Protection Act*;
- Making false or inaccurate statements in their application;
- Failure to provide vehicle storage or towing services safely and competently;
- Being a fit and proper person to be a vehicle storage or towing operator.

Those grounds for refusal which cannot be appealed include:

- Being refused a municipal towing or vehicle storage license or having one suspended, cancelled or revoked;
- Having a tow or storage certificate cancelled or revoked under the TSSEA;
- Having a disqualifying record of convictions under the *Criminal Code* and related statutes;
- Having officers and directors with such a disqualifying record.

Crucially, one non-appealable ground for refusal are circumstances in which any person “related” to the applicant has a disqualifying record of convictions under the *Criminal Code* and related statutes or if they have or had been refused a municipal towing or storage business license or have or had one suspended or revoked. The Regulations define “related” persons in the same fashion as the [Highway Traffic Act](#) does for the CVOR regime. The definition includes:

- They are related individuals;
- There are or were partners or had partners in common;
- Either individual directly or indirectly controls or controlled or manages or managed the other;
- Either corporation have or had common officers or directors or are or have been controlled, directly or indirectly by the same persons.

This is a broad definition and may potentially include any number of persons with whom an applicant might be affiliated. It is important for any current or prospective tow or storage operator to be mindful of who they are in business with or with whom they have done business in the past. Past associations cannot be undone but arguments can be made to the Director prior to any non-appealable decisions being made.

Judicial Considerations of the New Regulations

At present, there has only been one case before the License Appeal Tribunal (“LAT”) dealing with a refusal under the TSSEA. In *Puma v. Director of Vehicle Storage Standards*, [2023 CanLII 116478](#) (ON LAT), the applicant was refused a Tow Driver Certificate due to a disqualifying record of convictions for offences under the *Criminal Code* or related statutes. Refusals pursuant to this section are not appealable. In his appeal, the applicant did not dispute the application of the section itself but instead argued that, in his particular circumstances, the application of the section would be contrary to the intention of the legislation. The applicant was never afforded the opportunity to make such submissions on this point because the LAT held that it did not have jurisdiction to hear an appeal based on a non-appealable refusal. The LAT also determined that the [Statutory Powers and Procedures Act](#), which provides powers to tribunals to conduct their own proceedings, could not force the LAT to hear an appeal where the underlying statute did not permit one.

The LAT will not entertain appeals explicitly barred by the TSSEA or hear arguments with respect to the spirit of the law. Should an applicant wish to challenge the application of those grounds in the TSSEA to which there is no appeal, they must seek a judicial review in the Divisional Court.

In *Thibault v. Attorney General of Ontario*, [2024 ONSC 3168](#), another applicant challenged the constitutionality of the criminal conviction provisions in the Divisional Court by way of judicial review, after being denied of tow operator and tow driver certificates. The applicant sought an order from the court to prevent the refusal of his certificates from coming into effect pending the full hearing of his application for judicial review. The judicial review had not yet been heard, but the court refused to prevent the denial of the certificates coming into effect in the meantime.

How Should a Person Facing a Potential Refusal Protect Themselves?

A prospective tow driver or tow operator should exercise caution in advance of their application for a certificate to ensure that they do not find themselves facing a denial based on grounds that cannot be appealed. Once a prospective tow operator or driver has applied for a certificate, the Director will review the application and, if the Director is of the view that the certificate ought to be denied, they will issue a Notice of Proposal to Refuse that lays out the grounds for proposed refusal. At this stage, the applicant will be invited to make submissions to the Director on why the certificates should not be refused.

It is at this juncture that the party should engage a lawyer to prepare their written submissions to the Director. This is the time when the applicant is best positioned to convince the Director that a potential ground for denial should not be applied. Once the Director has reached a decision, options for an appeal are seriously limited, and such a refusal may bar an applicant from the industry for life.

Enforcement under the An Ounce of Prevention is Worth a Pound of Cure: The Importance of a Robust Document Retention Policy for Motor Carriers

By Lindsay Poole, Student-at-Law

For transportation services providers, proper document retention is an essential pillar of their operations. Carriers should ensure they have a comprehensive document retention policy in place to promote safe operations, ensure regulatory compliance, maximize operational efficiency and manage legal exposure. Having a well-articulated policy and ensuring that it is followed can prevent serious regulatory and legal headaches down the road.

In Canada, there is no consolidated source that motor carriers and transportation brokers can refer to in developing their document retention policy. Instead, record keeping and retention requirements are spread across various jurisdictions in Canada and outlined in their respective legislative and regulatory frameworks.

These various sources are largely informed by Canada's [National Safety Code](#) ("NSC"), a comprehensive code of minimum performance standards for the safe operation of passenger and commercial vehicles developed by the Canadian Council of Motor Transport Administrators, a body organized by the Government of Canada and those of the provinces and territories. The NSC was developed in consultation with the motor carrier industry to provide guidance for the legislative, regulatory and administrative actions taken by each jurisdiction.

Safety and Regulatory Compliance

The provinces and territories are responsible for the enforcement of safety on Canada's roads and

highways. Each jurisdiction is free to make its own regulations governing commercial vehicles, drivers, and motor carriers which are informed by the NSC's minimum standards. It is essential that carriers be familiar with the regulations in those jurisdictions in which they operate. While local carriers, particularly those operating within cities or regions in a province can safely limit themselves to their home jurisdiction, any company whose vehicles cross provincial borders should ensure they are in compliance with those aspects of the local regulatory framework applying to extra-provincial companies.

The NSC offers a general starting point for carriers who are developing their document retention policy:

Vehicle Inspections

The NSC identifies minimum standards with respect to vehicle inspections. A person conducting an inspection shall prepare a report in a written or electronic format. Carriers must retain the original copy of the vehicle inspection report and any certification of repairs stemming from the inspection for at least 6 months from the date the report was prepared.

Daily Logs and Supporting Documents

Carriers are to receive a driver's daily log or record of duty status no later than 20 days after it was completed by the driver. The NSC provides that motor carriers shall deposit daily logs or records of duty status and their supporting documents relating to those records at its principal place of business within 30 days after receiving them. These records must thereafter be retained for a period of at least 6 months after the day on which they are received.

These 'supporting documents' include records (handwritten and electronic) of the motor carrier which are maintained in the ordinary course of business such

as bills of lading, freight bills, dispatch records, fuel and toll receipts, custom declarations, traffic citations, accident reports, data from a driver's electronic logging device (if applicable), etc.

Electronic Logging Devices

Some trucks are not required to use certified electronic logging devices when carrying out their commercial duties but those that are required must ensure that their devices are in working order to properly complete their records of duty status. As stated above, records from a driver's electronic logging device must be retained by a carrier for at least 6 months to support a driver's record of duty status.

In the event that any malfunction with an electronic logging device occurs, the NSC provides that the carrier shall maintain a register of information relevant to the malfunction, and shall retain this information for a period of 6 months from the date on which the device was replaced or repaired.

Facility Audits

Carriers may be subject to a Facility Audit, the purpose of which is to monitor carriers for compliance with applicable highway safety regulations, including those covered by the NSC. Regulations enforced in a particular jurisdiction will dictate the frequency of such audits, the precise documents which a carrier must retain to satisfy an auditor, and the length of time those documents are to be retained. At a minimum, all carriers must maintain the following records and be prepared to produce copies when audited:

- 1) Records of the driver licensing qualifications of each person who operates a commercial vehicle on

its behalf, the hours of service worked by each driver and supporting documents, convictions for traffic offences or criminal driving offences incurred by such drivers, traffic accidents, and training records;

- 2) Records of interviews with drivers post offences and remedial measures implemented;
- 3) Records of vehicle maintenance and inspection procedures and proof that any defects uncovered have been corrected;
- 4) A written program which provides for a regimen of continuous and regular inspection, maintenance and repair of commercial vehicles.

If the appropriate records are not available, an inspector may report this to the authority charged with overseeing the safe operation of commercial vehicles in that jurisdiction. Carriers should therefore ensure not only that they meet the minimum requirements for document retention, but also familiarize themselves with the regulations in their relevant jurisdiction to ensure their retention policy can satisfy an audit, if and when it arises.

Audits are often the first step in what could become a costly and prolonged regulatory investigation which could imperil a company's licence to operate as a commercial carrier. This can lead to a carrier's safety status being downgraded which has the potential to place it in violation of existing agreements with shippers and brokers and to make future customers less inclined to engage it.

The Government of Canada provides further requirements for document retention related to certain federally-regulated aspects of the industry. In particular:

Records of Imports and Exports

Commercial carriers must keep books

and records related to the movement of commercial goods at their place of business in Canada for three years after they transported the imported or exported goods. These records must include dispatch logs, bills of lading, proof of customs report and release, invoices, and other documents such as commercial invoices or trip logs.

Financial, Accounting and Tax Records

Persons carrying on a business or engaged in commercial activity are required by the CRA to keep accounting and financial records to support their tax submissions for a period of six years from the end of the last tax year they relate to.

Personnel and Payroll Records

If a carrier employs operators who cross jurisdictions during the course of their services, whether they be inter-provincial or international, their employment is regulated by the [Canada Labour Code](#). Under the *Code*, a carrier, as an employer, is required to keep an employee's records for 36 months. When employment ends, a carrier must keep the employee's records for an additional 36 months thereafter.

As always, any carrier involved in cross-border operations should be mindful of the relevant United States government regulations respecting motor carriers.

Managing Legal Risk

Depending on the regulations of a carrier's respective jurisdiction, the guidelines set out above may represent minimum standards for document retention, but carriers should strongly consider implementing policies that go beyond the bare minimum. Not only will this ensure regulatory compliance within their jurisdiction, it also serves to protect their interests in the event that legal claims arise.

In most jurisdictions, the statute of limitations on legal claims is two years from the date of the incident giving rise to the loss. The best practice for carriers is to retain all documents relating to their shipments for a period of at least three years, as a claim may be issued in court but not served until after the two years are up.

Keep in mind that if an incident involves injury to a minor, the limitation does not start to run until the minor reaches the age of majority. For example, an action for an accident involving a minor in Ontario can be commenced until two years after the minor reaches the age of 18.

If the injured person is mentally incapable of filing a claim due to a physical or psychological condition, and they are not represented by a litigation guardian, the limitation period does not start running. This ensures that individuals who are unable to manage their own legal affairs due to their condition have the opportunity to pursue their claims at a later date when they are capable or represented. It is recommended that records be kept for 20 years in such cases.

The documentation includes accident/incident reports, vehicle inspection reports, drivers logs, contracts of carriage, employment records and documents relating to individual shipments such as bills of lading, carrier confirmations and emails. A party is placed at a serious disadvantage in litigation where they are unable to produce documents supporting their version of events or they are forced to rely on spotty records to demonstrate the same.

Maximizing Operational Efficiency

A thoughtfully organized document retention policy can offer benefits beyond simply mitigating risk. As competition in the industry continues to increase, it can serve as the competitive edge that carriers are looking for.

Assurances that relevant documents are retained can provide peace of mind to carriers and reduce the time spent retrieving and organizing such

records when inevitable audits or legal claims arise. Doing so will not only help carriers maintain their favourable safety ratings with regulatory bodies but it will provide peace of mind to shippers and brokers who can satisfy themselves that they are dealing with an efficient and well-run organization.

Reviewing past documents can also provide insight into costly areas of business operations, such as driver performance and maintenance issues. Historical data can inform future operational decisions and help identify inefficiencies, thereby assisting carriers in reducing costs and optimizing their operations.

Perhaps most importantly, a review of past accidents and damages can provide insight into how the overall safety of a carrier's operations can be improved.

Many carriers appreciate the value of having a proper document retention system only after dealing with the consequences of a failure to do so. Carriers would be wise to invest in developing a comprehensive and organized system for their business to ensure not only that they reap the benefits of proper document retention and record keeping but avoid the fallout of failure to retain critical records.

Whether a new carrier is looking to start off on the right foot or an existing carrier is seeking to overhaul its existing policies and procedures, organizations will benefit from seeking the advice of seasoned transportation regulatory and compliance specialists. The Transportation and Logistics Group at Gardiner Roberts offers the full spectrum of such services to motor carriers and other industry players.

Contact us

If you have a Transportation & Logistics Group matter and are in need of legal advice, please do not hesitate to contact the authors or [Rui M. Fernandes](mailto:rfernandes@grllp.com), at 416.203.9505 or rfernandes@grllp.com.

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