

Our Truck Driver Just Got a Ticket in Ontario: AS A CARRIER, WILL THIS AFFECT MY SAFETY RATING?



—Heather C. Devine*

Introduction

Carriers should be wary of renewed efforts of the Ministry of Transportation Ontario (MTO) and the Ontario Provincial Police (OPP) to target and remove unsafe vehicles from Ontario's roads.

Through "Operation Corridor," the MTO and OPP have teamed together again this fall: a similar event in 2013 led to more than 22,000 commercial vehicles across the province being pulled over with nearly 2,000 trucks being removed from the road for being unsafe and over 1,700 defective equipment-related charges being laid.

This year, as of the time of writing this article, the OPP has already made a total of 590 charges during a two-day series of inspections of 446 commercial vehicles. Due to safety violations, 104 vehicles were taken off the road. The purpose of this article is to review options for truck drivers and carriers when a driver is pulled over and ticketed during an inspection, as well as potential repercussions for the carrier and its officers and directors.

Ticket Options in Ontario

A ticketed driver has 15 days from receiving the offence notice to exercise three options:

Option 1: Plea of Guilty

- Voluntary payment of total payable.

Option 2 – Plea of Guilty

- A plea of guilty, with submissions as to penalty (to lower the applicable fine).

Option 3 – Trial option

- The driver can indicate a notice of intention to appear in court with the following language:
 - I intend to appear in court to enter a plea of not guilty at the time and place set for the trial and I wish to have the trial conducted in the English language.
 - I intend to challenge the evidence of the Provincial Offences Officer. I request that the officer attend the trial.

When exercising Option 3, the driver should sign where indicated and may provide a legal representative's name and address for the company and/or driver in Ontario. Carriers should ensure that truck drivers, both employee and independent contractors, have the name of experienced transportation counsel in Ontario, who can assist with advising as to the appropriate choice.

Once a driver pleads guilty by paying the ticket, a carrier, who may be subsequently charged with a different (and sometimes) more serious offence arising out of the same factual circumstances that led to the driver being ticketed, must seek a way to present a case in court which either side steps or excuses the driver's plea of guilty.

There are many ways to challenge an offence notice which are both technical and substantive. However, where a driver has exercised Options 1 or 2 and plead guilty, the technical and substantive defences available to a carrier are limited, or potentially eliminated.

Rarely can such defences eliminate the repercussions of the guilty plea since the Prosecutor has the option of compelling the truck driver to testify against the Carrier, and in Ontario (and Canada) there is no right to refuse to testify once compelled to do so.

This is a significant difference between Canada and the U.S. and foreign carriers should take note: a witness with relevant evidence can and often will be compelled to testify.

CVOR and CSR

A driver's plea of guilty to what may appear to be an insignificant offence can affect a Commercial Vehicle Operator's Registration (CVOR) and the Carrier Safety Rating (CSR). Carriers can face unpleasant surprises when they learn that each offence affects its performance because the CVOR record and the performance information it provides includes violation rates, thresholds, and audit scores; all of which ultimately can affect a carrier's Safety Rating.

The CVOR system governs operators of commercial motor vehicles, including trucks that have a registered gross weight of over 4,500 kg and buses that can carry 10 or more passengers. Owners/operators of these vehicles must apply for, obtain and renew a commercial operator's registration certificate.

All commercial vehicles plated in Ontario, the U.S.A., or Mexico require a CVOR certificate. The CVOR certificate has an identifier which is a unique nine-digit identification number and the certificate must be carried in each commercial motor vehicle and surrendered when requested by an MTO enforcement officer, or police officer for inspection purposes. Leased vehicles require the lease to identify both the vehicle and the CVOR number.

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Vehicles plated in other Canadian provinces or territories do not need a CVOR certificate but instead require a safety for fitness certificate from the province or territory in which the vehicle is plated.

Responsibilities of a Carrier

The carrier or CVOR operator is responsible for:

- the conduct of the driver,
- the mechanical safety condition of the vehicle, and
- the shipping of goods or passengers in the vehicle.

While the carrier does not need to be the vehicle owner, it must hold a valid CVOR certificate for leased or contracted vehicles.

Some of the legislated responsibilities of a carrier regarding the drivers and vehicles in their operation are:

- employing qualified and licensed drivers,
- monitoring safety performance of drivers, including hours of service,
- resolving driver safety issues,
- keeping vehicles in good, safe condition at all times,
- ensuring load security,
- ensuring daily and annual, semi-annual inspections are completed,
- keeping records on file,
- e.g. vehicle repairs, kilometres travelled per year, and
- notifying the Ministry of changes, etc.

The Carrier's Record

The CVOR system monitors a carrier's CVOR record over a two-year period in an automated computer system which contains information regarding:

- carrier information (e.g. fleet size, kilometres travelled, commodity transported, overall violation rate, safety rating, etc.),
- convictions,
- reportable collisions,
- CVSA safety inspections, and
- ministry interventions.

A carrier can learn its information by requesting its CVOR abstract. There are three different CVOR abstracts available:

- a public CVOR abstract (Level 1) which is a one-page summary document available to the general public summarizing a carrier's record for a two-year period,
- a carrier CVOR abstract (Level 2) is only available to the carrier or their authorized agent and this includes summary data for a two-year period as well as detailed event data for collisions, convictions, and inspections for a five-year period, and
- a CVOR driver abstract is a five-year record of collisions associated with a conviction of the driver for a safety-related offence, convictions, and inspections relating the driver (while operating a commercial motor vehicle in Ontario only). The driver's licence, status and medical due date are also shown.

In summary, the CVOR system evaluates a carrier based on the events in its CVOR record, including collisions, driver and carrier convictions, CVSA inspections and detentions and the results of facility audits.

When evaluating a carrier, its on-road performance is based on three separate safety indicators. These are a carrier's: total collision points accumulated in (up to) a 24-month (**collision violation rate**),

- total conviction points accumulated in (up to) a 24-month (**conviction violation rate**), and
- total inspection points accumulated in (up to) a 24-month, on CVSA inspections (**inspection violation rate**).

Threshold Values are the Baseline to Understanding a Carrier's Violation Rate

The points accumulated in each category are compared to the point threshold values listed in a legislated "Table of Threshold Values" to determine the percentage of threshold.

Thresholds for collisions and convictions are based on the carrier's kilometric travel in Canada, whereas thresholds for inspections are based on the total number of units (drivers and vehicles) inspected in Canada. The violation rate (percentage of threshold) in each category is combined to arrive at an overall violation rate. Collisions and convictions contribute at **double the value** of inspections towards to the overall rate period.

Since they have been shown to be better predictors of future collisions than out-of-service defects, collisions and convictions are given more importance in the CVOR System in determining the overall percentage of threshold. *U.S. carriers should know that carriers with vehicles plated in the U.S.A are rated on kilometres travelled in Ontario only, and only for Ontario events.*

MTO Interventions or Sanctions

There are pre-determined stages established at which point carrier interventions or sanctions are considered by the Ministry.

- Warning letters are issued at 35%;
- A request for a facility audit is triggered at 50%;
- An interview with the Ministry at 85%; and
- A sanction analysis of 100% or over.

A sanction is the most severe disciplinary measure the Registrar may impose. It may result in a fleet limitation, plate seizure, or suspension or cancellation of a carrier's operating privileges. Sanctions may also result in a carrier receiving an unsatisfactory safety rating. These sanctions take effect throughout Canada.

There is an opportunity to attend a hearing to show cause as to why commercial vehicle or operator privileges in Canada should not be revoked, suspended or limited but that appearance requires a hearing before the License Appeal Tribunal which lacks the formality of the Ontario Courts as well as many of the formal protections of evidence accorded therein.


Personal Liability for Corporate Officers and Senior Officials

Finally, a corporate officer or senior official of the carrier may be unpleasantly surprised to find that all interventions and sanctions concerning a carrier's CVOR record are directed towards him or her personally. The Ministry has openly stated that its approach of targeting the individual who has control of and accountability

for the carrier's operation has proven very successful in improving carrier performance. The Ministry advertises that over 80% carriers that are subject to an intervention of this nature improve their record to an acceptable standard.

Conclusion

In Ontario, a carrier should ensure its drivers (both employees and independent contractors) are warned

not to treat tickets as a nuisance but instead, to seek legal advice before any of the offence options are exercised. No offence is minor or insignificant in the CVOR or CSR System, since they can and do affect a carrier's rating. All carriers should track their rating within the system on a regular basis, and ensure that they remain in good standing, and that they review the CVOR Abstract for all drivers which may affect a carrier's rating. 

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A record of the date and time of disinfection and flushing must be kept for three years.

In the case of water loaded into on-board potable water systems, operators of conveyances will be required to keep a three-year record of the date, the source, the name of the terminal where water is loaded, the name of any person or entity that transports the water from the terminal to the conveyance, and the GPS coordinates or latitude and longitude of the vessel's location during the loading.

Conveyances will be able to satisfy the Regulations for potable water by supplying prepackaged bottled water meeting the requirements of the Canadian *Food and Drugs Act* and the *Food and Drug Regulations* (collectively, the "FDR requirements").

Under the Regulations, ice used on conveyances for either contact refrigeration of food or use in beverages will be required to be made from potable water from the on-board system, or to be prepackaged ice meeting all FDR requirements.

While the Regulations are generally consistent with comparable international standards, they impose sampling and record-keeping requirements that may be more stringent in

certain important respects; for example, eight annual *E. coli* tests per aircraft will be required. International operators need to be aware of how the new Regulations may impose requirements more onerous than other national and international drinking water safety regimes such as the WHO Guide to Hygiene and Sanitation in Aviation, the U.S. Aircraft Drinking Water Rule, and European Union Council Directive 98/83/EC.

Keeping Drinking Water Clean


Over the past several years, some operators, particularly airlines, have been working with the Public Health Agency of Canada's Travelling Public Program to implement potable water management plans ("PWMPs"). According to the government, operators that have PWMPs in place should be well-positioned for compliance with the Regulations. However, even operators with PWMPs should review those plans to determine what, if any, changes will be required in order to ensure compliance with the Regulations' new and detailed sampling and recordkeeping requirements.

The Regulations do not set out penalties for non-compliance, so the general *Criminal Code* maximum

penalty of a \$5,000 fine or six months in prison (or both) for summary offences would apply. This exceeds the prior penalties capable of being issued under the existing PWRCCs.²

It is worth noting that neither the PWRCCs nor the proposed Regulations will require conveyances to provide water to passengers, unless food for passengers is prepared onboard.

During a 75-day public comment period that ended in late July, the Public Health Agency of Canada received 18 comments from industry members, including domestic and international operators and associations, and public health agencies in Canada. A summary of these comments will be published along with any revisions to the proposed regulations in a future edition of the *Canada Gazette*. It is proposed that the new Regulations will come into force six months after their publication in final form, which could happen later this year or in early 2015.

Should you have any questions about the proposed Regulations and how they may affect your business, please contact the authors. 

Endnotes

1. "Potable water" is defined in the PWRCCs; it means water free of pathogenic bacteria and having few than 2.2 coliform bacteria per 100 mL when tested in accordance with the American Public Health Association's Standard Methods for the Examination of Water and Sewage.
2. The maximum penalty for intentional non-compliance under the PWRCCs is \$200 or three months in prison.