

# My driver just got a ticket in Ontario: How can I protect my safety rating?

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Foreign and local carriers with trucks on the road in Ontario should be aware that Operation Safe Driver Week commences July 15, 2018. During that week (July 15-21), law enforcement around North America will be targeting unsafe driving behaviour and it is expected that there will be concentrated efforts of the Ministry of Transportation Ontario (MTO) and the Ontario Provincial Police (OPP) to target and remove unsafe vehicles from the road.

Last year, a two-day commercial vehicle blitz in Milton reported, “477 vehicles inspected over a two-day period beginning October 4. Of those, 156 were taken out of service, resulting in 331 charges laid and 24 sets of plates seized. The results represent a 33% failure rate.”

“Based on inspection metric, this year was our busiest year yet conducting this blitz,” said Halton Regional Police Service Sergeant **Ryan Snow** of the program that saw commercial vehicles escorted to the parking lot at Mohawk Racetrack North of Toronto for inspection.

“Load security, mechanical defects, overweight vehicles, failing to complete inspections and documentary issues were all encountered and led to significant charges being laid.”

The purpose of this article is to review options for drivers and carriers when a driver is pulled over and ticketed during an inspection, as well potential repercussions for the carrier and its officers and directors.

## Ticket options in Ontario

A ticketed driver has 15 days to exercise three options:

- **Option 1: Plea of Guilty**  
Voluntary payment of total payable.
- **Option 2 – Plea of Guilty**  
Submissions as to Penalty.
- **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.*

The driver should sign where signature is indicated and provide a legal representative’s name and address for the company and/or driver in Ontario.

There are many ways to challenge an offence notice that are both technical and substantive. However, where a driver has exercised Option 1 and pleaded guilty by voluntary payment of the fine, the technical and substantive options are limited, or potentially eliminated.

Once a driver pleads guilty by paying the ticket, a carrier who is subsequently charged with a different, 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. Rarely can such defences eliminate the repercussions of the guilty plea.

## CVOR and CSR

The repercussions of what appears to be an insignificant ticket to a driver, 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 the resulting Safety Rating.

The CVOR system governs operators of commercial motor vehicles, including trucks, that have a registered gross weight 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 that are plated in Ontario, the US, or Mexico require a CVOR certificate. This certificate has a unique nine-digit identification number and must be carried in each commercial motor vehicle and surrendered when requested by an MTO enforcement officer, police officer for inspection purposes. Leased vehicles require the lease to identify both the vehicle and the CVOR number.

Vehicles plated in other provinces or territories do not need a CVOR certificate, but instead require a safety for fitness certificate from their home jurisdiction.

## Responsibilities of a carrier

The carrier or CVOR operator is responsible for:

- conduct of the driver,

- mechanical safety condition of the vehicle, and
- 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 over five-years, 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 on 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:

- 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).

The points accumulated in each category are compared to the point threshold values listed in *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 the overall rating and score.

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 determining the overall percentage of threshold. *US 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.*

There are pre-determined stages established at which point the Ministry

considers carrier interventions or sanctions.

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

Finally, a carrier's corporate officer or senior official 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% of carriers that are subject to an intervention of this nature improve their record to an acceptable standard.

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 court as well as many of the formal protections of evidence accorded in the Superior Court as compared to a Licence Tribunal Appeal hearing.

During this process, it's important to create a team between the fleet/safety manager, legal/risk management/and drivers so when an inspection takes place that leads to a ticket or impounding the vehicle, everyone knows their role in defending the charge and protecting the CVOR. 

<sup>1</sup> <https://www.insidehalton.com/news-story/7596232-update-with-results-milton-truck-inspection-blitz-aims-to-examine-500-vehicles/>