

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Simard Westlink Inc. v. Office of the British Columbia Container Trucking Commissioner*,  
2025 BCSC 2178

Date: 20251104  
Docket: S248413  
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

**Simard Westlink Inc.**

Petitioner

And

**Office of the British Columbia Container Trucking Commissioner and the  
Attorney General of British Columbia**

Respondents

Before: The Honourable Madam Justice Wilkinson

## Reasons for Judgment

In Chambers

Counsel for the Petitioner:

D. Penner

Counsel for the Respondents:

Z. Froese  
B. Risk

Place and Date of Hearing:

Vancouver, B.C.  
April 8 and 9, 2025

Place and Date of Judgment:

Vancouver, B.C.  
November 4, 2025

[1] The petitioner brings a petition for judicial review of a reconsideration decision issued February 22, 2024 by the Office of the British Columbia Container Trucking Commissioner (the "Reconsideration Decision"). In the Reconsideration Decision, the Commissioner determined that off-dock rates set by the Commissioner under s. 22 of the *Container Trucking Act*, S.B.C. 2014, c. 28 (the "*Act*") and the *Container Trucking Regulation*, B.C. Reg. 248/2014 (the "*Regulation*") applied to trucking services provided by the petitioner from a rail yard to another facility.

[2] In essence, the effect of the Reconsideration Decision is that once a person obtains a license under the *Act*, certain activity which would otherwise not be regulated under the *Act* becomes regulated activity only with respect to persons who chose to be licensed under the scheme of the *Act*. The petitioner submits this creates an uneven playing field within the unregulated trucking business which, they submit, was not the intention of the legislature.

[3] The Commissioner submits that the legislative scheme contemplates such a "quid pro quo" for licensees and otherwise supports his findings.

[4] For the reasons that follow, I dismiss the petition.

### **Background**

[5] Licensees under the *Act* carrying out container trucking services in the Lower Mainland must use truck tags allocated by the Commissioner on the conditions imposed by the Commissioner.

[6] On March 15, 2023, two untagged trucks belonging to the petitioner were observed moving a total of ten containers in Port Coquitlam, British Columbia (the "March Trips"). The Commissioner launched an investigation into those container trucking services.

[7] On investigation, the Commissioner determined that the March Trips were "specified container trucking services" for the purposes of s. 22 of the *Act*, and that the petitioner had not paid the established off-dock rates for those trips.

[8] As a result of those findings, on May 26, 2023, the Commissioner issued an order under s. 9 of the *Act* requiring the petitioner to cease performing untagged container trucking services in contravention of its licence and the *Act* (the "May 26 Order").

[9] On July 25, 2023, the petitioner filed a petition for judicial review seeking that the Court set aside the May 26 Order. At this point, the Commissioner had not yet issued a decision, and the petitioner had not availed itself of the reconsideration process provided for in the *Act*. As a result, this petition for judicial review was premature.

[10] On August 25, 2023, the Commissioner issued a decision (the "Original Decision"), finding that licensees are required to pay off-dock rates set by the scheme for container movements between facilities in the Lower Mainland that do not involve a marine terminal. The Commissioner determined that the petitioner had failed to comply with the *Act* and its licence, ordered that the petitioner compensate drivers that had not been paid the regulated rates for the March Trips, and ordered that the petitioner to adjust its payroll to bring itself into compliance with the regulated rates.

[11] On September 5, 2023, the petitioner filed an application for a stay of the May 26 Order and the Original Decision. This application was dismissed on September 29, 2023 in reasons indexed as *Simard Westlink Inc. v. Office of the British Columbia Container Trucking Commissioner*, 2023 BCSC 2007 (the "Simard Injunction Decision").

[12] On September 15, 2023, the Commissioner issued Decision Notice No. 09/2023 (the "Decision Notice") in which he ordered that the petitioner pay a \$12,000 administrative penalty and confirmed the Original Order requiring the petitioner to backpay its drivers as required to bring itself into compliance with the *Act*.

[13] On October 12, 2023, the petitioner filed an application for reconsideration of the Decision Notice, which was based on the Original Decision. The petitioner made

submissions to the Commissioner for the purposes of the reconsideration. In its submissions the petitioner argued that the regulatory regime under the *Act* and the *Regulation* did not capture the March Trips.

[14] The Commissioner provided the Reconsideration Decision on February 22, 2024. In the Reconsideration Decision, the Commissioner imported analysis undertaken in the Original Decision and addressed some new issues. He determined that off-dock rates set by the Commissioner under s. 22 of the *Act* applied to the container trucking services in question.

[15] The Commissioner also reduced the administrative penalty imposed on the petitioner to \$8,000, vacated the order concerning backpay to one of the drivers involved in the March Trips, and reduced the backpay owed to the other driver involved in the March Trips.

[16] As the final decision of the Commissioner, it is the Reconsideration Decision which is subject to review, as informed by the Original Decision and the Decision Notice and the investigations: *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329 at paras. 34-45.

### **The Petition for Judicial Review**

[17] The petition for judicial review before me was filed December 4, 2024 seeking to quash the Reconsideration Decision or send the matter back to the Commissioner for reconsideration.

[18] The petitioner submits that the Commissioner acted outside his jurisdiction in regulating the March Trips and that his decision was patently unreasonable.

### **The Statutory Framework**

[19] The *Act* "was created within the context of a long-standing dispute about fair compensation for container truck drivers who service the Lower Mainland's marine ports... [I]ts core purpose was to create a comprehensive provincial regulatory regime to establish such compensation and enforce it through the licensing of

container truck companies": *Aheer Transportation Ltd. v Office of the British Columbia Container Trucking Commissioner*, 2017 BCSC 1111 at para. 82 [*Aheer BCSC*]. Disruption in the "drayage industry" (the transportation of containerized cargo by trucking companies to and from an ocean port) was the focus of early negotiations leading to the regulatory scheme: *Aheer Transportation Ltd. v. Office of the British Columbia Trucking Commissioner*, 2018 BCCA 210 at para. 1 [*Aheer BCCA*].

[20] The purpose of the *Act* and the *Regulation* is "to preserve stability in the drayage sector by addressing chronic rate undercutting and driver compensation issues through a system of minimum rates, audits, licensing, and enforcement": *Can. American Enterprises Ltd. v. The Office of the British Columbia Container Trucking Commissioner*, 2020 BCSC 2156 at para 10.

[21] During the 2014 work stoppage, the provincial and federal governments and Port Metro Vancouver met with worker representatives. These discussions led to the 15-point Joint Action Plan dated March 26, 2014 (the "JAP"): *Aheer BCCA* at para. 23. In exchange for the truckers' agreement to immediately return to work, the Government of Canada, the Province of British Columbia and Port Metro Vancouver agreed to a number of conditions. One of those conditions was to ensure off-dock trips (trips between facilities) were remunerated according to the newly increased regulated rates.

[22] Vince Ready and Corinn Bell were appointed to conduct an independent review of the 2014 dispute and the issues creating conflict in the drayage industry. The result of their review was the Recommendation Report - British Columbia Lower Mainland Ports (the "Ready/Bell Report"), dated September 25, 2014.

[23] The Ready/Bell Report identified the issues underlying labour instability in the drayage sector and made recommendations to mitigate those issues, including the establishment of a provincial regulatory authority to oversee a container trucking licensing system and the remuneration of drivers: *Aheer BCCA* at paras. 26-27.

[24] Off-dock trips were a significant concern in the Ready/Bell Report. Among the concerns identified with off-dock trips were a lack of regulation, low remuneration, and rampant undercutting.

[25] One of the key recommendations made by the Ready/Bell Report was that clear regulations were needed to support and address payment rates for both on-dock and off-dock trips. The Ready/Bell Report proposed a table of regulated off-dock rates.

[26] The bill introducing the *Act* was extensively discussed and debated in the legislature in 2014. The Minister of Transport noted during the committee stage after being pressed on a number of occasions for clarification and confirmation that "[t]here are a tremendous number of container moves in the Lower Mainland which have nothing whatsoever to do with the drayage sector. We want to make absolutely certain that these regulations do not capture any non-port-related or non-drayage-related moves" and he repeated that sentiment, stating that it was "very important to make sure that we capture only drayage sector moves and not container moves that have nothing whatsoever to do with the port". *Hansard Debates*, November 18, 2014 (morning sitting) at 5370-1.

[27] The Court of Appeal in *Aheer BCCA* found that the interpretation of the *Act's* retroactive rate-setting provisions at issue in that case required a consideration of the context in which the legislation was enacted, and "the circumstances in which the legislation was passed" including "statements made in the Legislature as to the purpose of the retroactive element:" *Aheer BCCA*, at para.8.

### **Key Legislative Provisions**

[28] The *Act* provides the following relevant definitions and provisions:

1 ... "**container**" has the meaning prescribed in the regulations;

"**container trucking services**" means the transportation of a container by means of a truck;

...

### **Rules of practice and procedure**

6 (1) The commissioner may make rules respecting practice and procedure for all applications, audits, complaints, reconsiderations, submissions and hearings coming before the commissioner and for all investigations.

(2) The commissioner must make the rules respecting practice and procedure made under this section accessible to the public in the manner the commissioner considers appropriate.

...

#### **Orders of commissioner**

9 (1) If a licensee fails to comply with any provision of this Act or the regulations or with the licensee's licence, the commissioner may order the licensee to comply with those requirements promptly or within a period that the commissioner may specify.

(2) An order of the commissioner takes effect immediately or on any later date specified in the order.

(3) If a work, act, matter or thing is, by order of the commissioner, required to be performed or completed within a specified time, the commissioner may, if the circumstances of the case in the commissioner's opinion so require, extend the time so specified.

...

#### **Jurisdiction of commissioner exclusive**

12 (1) The commissioner has exclusive jurisdiction in all cases and for all matters in which jurisdiction is conferred on the commissioner by this or any other enactment.

(2) An order, decision or proceeding of the commissioner must not be questioned, reviewed or restrained by any process or proceeding in any court.

...

#### **Licence required**

16 (1) A person must not carry out prescribed container trucking services in a prescribed area unless

- (a) the person holds a licence issued to that person that gives the person permission to carry out container trucking services in the specified prescribed area, and
- (b) the person carries out the container trucking service in compliance with
  - (i) this Act and the regulations,
  - (ii) the licence, and
  - (iii) if applicable, an order issued to the person under this Act.

(2) The commissioner, by publishing an advertisement in accordance with the regulations, may invite applications for a licence.

(3) Within the time specified in an advertisement published under subsection (2), a person may apply to the commissioner for a licence by submitting, in the form and manner the commissioner requires,

- (a) the required information and records,
- (b) the required fee, and
- (c) the security required under section 20, if any.

(4) Subject to subsection (5), on receiving an application under subsection (3) and after considering the prescribed matters, if any, the commissioner may

- (a) issue a licence to an applicant if the applicant meets the prescribed requirements, or
- (b) refuse to issue a licence.

(5) If the commissioner refuses, under subsection (4) (b), to issue a licence to an applicant, the commissioner must provide notice to the applicant of that refusal.

...

**Rates and fuel surcharges may be established**

**22** (1) The Lieutenant Governor in Council may, by regulation,

- (a) establish an initial minimum rate that a licensee must pay to a trucker who provides, in specified circumstances, specified container trucking services to or on behalf of the licensee,
- (b) establish a rate under paragraph (a) based on one or more of the following:
  - (i) a rate per trip;
  - (ii) an hourly rate;
  - (iii) any other basis the Lieutenant Governor in Council considers appropriate,
- (c) for the purposes of paragraph (a), specify one or more circumstances and one or more container trucking services on any one or more of the following:
  - (i) the starting point of the container trucking services;
  - (ii) the end point of the container trucking services;
  - (iii) the geographic area within which the container trucking services are carried out;
  - (iv) the dates or times of the container trucking services;
  - (v) the duration or distance travelled during the carrying out of the container trucking services;
  - (vi) any other basis the Lieutenant Governor in Council considers appropriate,

- (d) for the purposes of paragraph (b) (i), specify which container trucking services or which parts of the container trucking services constitute a trip to which a rate established under paragraph (b) is to apply,
- (e) specify the time by which a rate established under paragraph (a) must be paid, and
- (f) establish an initial minimum fuel surcharge, based on a specified unit of fuel used during the provision of container trucking services, that a licensee must pay to a trucker who provides, in specified circumstances, specified container trucking services to or on behalf of the licensee.

(2) For certainty, an initial minimum rate and an initial minimum fuel surcharge established under subsection (1) may be based on container trucking services provided before this section comes into force.

(3) If the Lieutenant Governor in Council repeals the initial minimum rate established under subsection (1), the commissioner may establish, by order, a minimum rate, and, for that purpose, subsection (1) applies as if a reference in that subsection to the Lieutenant Governor in Council were a reference to the commissioner.

(4) If the Lieutenant Governor in Council repeals the initial minimum fuel surcharge established under subsection (1), the commissioner may establish, by order, a minimum fuel surcharge, and, for that purpose, subsection (1) applies as if a reference in that subsection to the Lieutenant Governor in Council were a reference to the commissioner.

(5) An order made under subsection (3) or (4) comes into force on the date the order is published under section 11 or on a later date specified in the order.

### **Division 3 - Obligations on Licensees**

#### **Compliance with established rate**

**23** (1) A licensee, in seeking to employ or retain a trucker to provide container trucking services to or on behalf of the licensee, must not offer to the trucker, or require or request the trucker to accept, a rate or a fuel surcharge that is less than the rate or fuel surcharge established under section 22 for those container trucking services.

(2) A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

(3) For certainty, subsection (2) applies despite any provision of a collective agreement to the contrary.

[29] The *Regulation* provides the following relevant definitions and provisions:

#### **Definitions**

1 (1) In the Act and this regulation:

**"container"** means a metal box furnished or approved by an ocean carrier for the marine transportation of goods;

...

**"facility"** means a location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping, but does not include a marine terminal;

...

**"marine terminal"** means one of the following:

- (a) Centerm;
- (b) Deltaport;
- (c) Fraser Surrey Docks;
- (d) Vanterm;
- (e) any other container terminal for which a trucking authorization or port access agreement is required by the Vancouver Fraser Port Authority;

...

**"off-dock trip"** means one movement of one or more containers by a trucker from one facility in the Lower Mainland to a different facility in the Lower Mainland, but does not include

- (a) an on-dock trip, or
- (b) a movement of a container from one location in a facility to a different location in the same facility;

**"on-dock trip"** means one movement of one or more containers by a trucker from

- (a) a marine terminal to a location in the Lower Mainland, or
- (b) a location in the Lower Mainland to a marine terminal;

...

**"trip"**, in relation to container trucking services, means an off-dock trip or an on-dock trip.

(2) A reference to distance in this regulation is to public road distance.

**Prescribed trucking services and area**

**2** (1) The container trucking services prescribed for the purposes of section 16 (1) [*licence required*] of the Act are container trucking services that require access to a marine terminal, but do not include

- (a) container trucking services performed by a trucker on behalf of a licensee, using a truck with a truck tag issued by the commissioner, or

(b) transportation of a container to or from a location outside the Lower Mainland.

(2) The area prescribed for the purposes of section 16 (1) of the Act is the Lower Mainland.

### **The Commissioner's decisions**

[30] According to the Commissioner's May 26 Order and as explained in the subsequent decisions, the *Act* may apply even if no part of the container trucking services provided by a company like the petitioner requires access to a marine terminal.

[31] The Commissioner accepts that unlicensed companies can and do perform all of the work at issue in this case without tagged trucks and without being required to pay regulated rates. The Commissioner accepts that he has no jurisdiction to regulate unlicensed companies performing trucking services provided that those companies do not require access to a marine terminal.

[32] In other words, even under the Commissioner's interpretation, there are two types of trucking services: services which require access to a marine terminal and services which do not. The Commissioner accepts that a company only needs a licence for the former. The Commissioner also accepts that unlicensed companies are free to perform the latter, without any regulation under the *Act*. However, the Commissioner's position is that, once licensed, a company must use tagged trucks and pay regulated rates for that work.

[33] The Commissioner therefore interprets the *Act* in a manner that treats licensed and unlicensed companies differently in respect of the exact same type of work. That is the type of work that is at issue in this judicial review.

[34] Stakeholders raised concerns about the Commissioner's interpretation of the *Act* and sought clarification from the Commissioner as to how the *Act* applies to containers that do not require access to a marine terminal but are instead moved to and from facilities in the Lower Mainland operated by rail carriers.

[35] In response, the Commissioner issued an Industry Advisory on May 18, 2022 which stated, among other things:

The [Act] is intended to regulate on-dock and off-dock container trucking services in the Lower Mainland (container trucking services that require access to marine terminals at some stage). “Containers” moved to and from rail facilities in the Lower Mainland are regulated by the *Act*. This means that they must be carried out by licensees using tagged trucks and that they attract the regulated rates. This has always been the case.

...a metal box that has been moved by rail within Canada qualifies as a “container” if it is furnished or approved by a company responsible for its marine transportation. And this, in turn, means that if the “container” is moved between rail facilities and other facilities in the Lower Mainland, it must be moved by licenced companies using tagged trucks. In other words, not all container moves from rail facilities are “domestic” and outside the scope of the *Act*.

[36] The Commissioner referred to the Industry Advisory in the May 26 Order and his subsequent decisions.

[37] The Industry Advisory acknowledges that prescribed container trucking services require access to a marine terminal “at some stage”. But it goes on to state that if a container is “moved between rail facilities and other facilities in the Lower Mainland, it must be moved by licenced companies using tagged trucks.”

[38] This latter statement appears to suggest that the *Act* applies to any trucking services of a metal box within the Lower Mainland, where that metal box has, at some stage, been “furnished or approved” by an ocean carrier for the marine transportation of goods, provided that it moves between rail facilities and other facilities in the Lower Mainland. According to the Commissioner, this may be the case, even if those facilities are not marine terminals.

[39] In other words, according to the Commissioner’s Industry Advisory:

- a) Once a metal box is furnished or approved by an ocean carrier for the marine transportation of goods, it is a container under the *Act* and no further analysis is necessary. How it is used, or has ever been used, is irrelevant; and

- b) If a container is trucked within the Lower Mainland between facilities, the container must be transported with a tagged truck at regulated rates, even if no marine terminal is involved in the trucking services.

[40] This would appear to disregard the marine terminal access requirement specifically provided for in the *Regulation*. It is also inconsistent with the Commissioner's later position that unlicensed companies may perform trucking services, without tags or regulated rates, between facilities.

[41] By relying solely on the conclusion of the Industry Advisory in the May 26 Order – i.e. by relying on the statement that “if the ‘container’ is moved between rail facilities and other facilities in the Lower Mainland, it must be moved by licensed companies using tagged trucks” – the Commissioner appears to ignore the marine terminal access requirement (which was also noted in the Industry Advisory) which is required under the *Regulation* and is required to harmonize the words of the *Act* and its purpose. Again, it would appear the purpose of the scheme is to deal with economically disruptive work stoppages affecting trucking companies transporting containerized cargo to and from ocean ports.

[42] In the May 26 Order, the Commissioner determined that the *Act* applied to the containers and trucking services in question based on: (a) the fact that the containers were owned by or had recently travelled on ocean carriers, and (b) were moving between facilities in the Lower Mainland.

[43] Following the May 26 Order, the petitioner made arguments to the Commissioner as to why the logic of his position does not withstand scrutiny. Among other arguments, the petitioner maintained that:

- a) the Commissioner's position is inconsistent with the previous Commissioner's position on the interpretation of the *Act*;
- b) the Commissioner's position is inconsistent with the findings of the previous Commissioner's audit of the petitioner in which the previous

Commissioner examined Simard's records and found that the petitioner was in compliance with the *Act*,

- c) the Commissioner's position would reward and encourage trivial corporate restructuring to avoid the *Act*. For example, a licenced company could create a subsidiary or affiliate to do only unlicenced work, without attracting any of the regulation of the *Act*;
- d) the Commissioner's interpretation of the definition of a "container" is inconsistent with the language used in the *Regulation* and ignores relevant distinctions between different types of containers and the cargo carried on them, capturing containers that never pass through marine terminals and are never used for the marine transportation of goods (aside from the initial point of manufacture and shipment to Canada); and
- e) the Commissioner's interpretation of the definition of a "container" leads to the absurd result that a container (and a movement of that container) that would otherwise be caught by the *Act* would avoid the *Act* by the simple act of unscrewing a small metal plate attached to it. In other words, the logic of the Commissioner's position allows for what he takes to be the intention of the legislature to be defeated by a person using a screwdriver for a minute or two to remove a small metal plate attached to it.

[44] The Commissioner ultimately accepted some of the petitioner's arguments, conceding in the Reconsideration Decision that it was understandable for the Petitioner to believe that certain containers were not caught by the *Act*. But the Commissioner rejected their central argument that the type of work in the case at bar is not caught by the *Act*.

[45] The Petitioner referred to its submissions and authorities on the injunction application in its subsequent reconsideration application before the Commissioner. That material included Hansard extracts relating to the legislative provisions and

purpose of the scheme. The Commissioner does not address any of the Hansard extracts in his decisions.

**Standard of Review**

[46] On judicial review, the court determines whether relief under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 ("JRPA") is warranted. The court assesses, on the applicable standard of review, whether a decision-maker has made a reviewable error justifying the court's intervention.

[47] The role of the court in a judicial review is supervisory in nature. The court's function is to ensure that decision-makers act within the scope of the authority granted to them under their enabling legislation: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at para. 34 and *Millar v. Laughlin's Mobile Home Park Ltd.*, 2024 BCSC 1834 at paras. 28-29.

[48] The court on judicial review does not sit as an appellate court. It also does not re-try the matters decided by the decision-maker or review the wisdom of the decision-maker's decision. The court cannot re-weigh the evidence, make findings of credibility or substitute its view of the merits for that of the decision-maker: *Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371 at para. 42.

[49] The court does not evaluate the policy merits of a decision on judicial review, especially one made by a specialized tribunal: *Global Greenhouse Produce Inc. v. British Columbia (Marketing Board)*, 2003 BCSC 1508 at para. 69; *Hudson's Bay Company ULC v. Ontario (Attorney General)*, 2020 ONSC 8046 at para. 73; and *Tanudjaja v. Attorney General (Canada)*, 2013 ONSC 5410 at para. 143.

[50] Pursuant to s. 2(4) of the *Act*, and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ("ATA"), the Reconsideration Decision is reviewable on the patent unreasonableness standard of review: *Gulzar Transport Inc. v. British Columbia (Container Trucking Commissioner)*, 2023 BCSC 1601 at para. 28.

[51] Patent unreasonableness is defined under section 58(3) of the *ATA* as follows:

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

- (a) is exercised arbitrarily or in bad faith,
- (b) is exercised for an improper purpose,
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

[52] Judicial interference in an administrative decision is permissible where the decision is based on no evidence at all, or where the decision is "clearly irrational", "openly, clearly [and] evidently unreasonable" or "border[ing] on the absurd": *Port Transportation Association v. The Office of the British Columbia Container Trucking Commissioner*, 2022 BCSC 387 at para. 76.

[53] A court reviewing on the patent unreasonableness standard must give the decision-maker the highest degree of deference: *Ponich Poultry Farm Ltd. v. British Columbia Marketing Board*, 2002 BCSC 1369 at para. 30.

[54] The Commissioner's Reconsideration Decision was based primarily on the facts that the containers:

- a) were owned by or had recently travelled on ocean carriers; and
- b) were moving between facilities in the Lower Mainland.

[55] The Commissioner was required to take into account, among other things;

- a) whether the container trucking services were prescribed container trucking services under the *Act*. If they were not, no licence was required and anyone could perform them;
- b) the marine terminal access requirement set out in s. 2 of the *Regulation*.  
As the Industry Advisory recognized, this is a prerequisite for a finding that the container trucking services were prescribed;

- c) the scheme of the *Act*, the object of the *Act*, and the intention of the legislature; and
- d) the meaning of “container” provided for in the *Regulation* in light of the above.

### **The Analysis Undertaken by the Commissioner**

[56] The Commissioner concluded that the off-dock rates were included in the *Regulation* to address the undercutting experienced by drivers who also performed on-dock work and that the regulation of off-dock work secured a minimum income for drivers when they were not performing on-dock work, all of which was crucial to the stability of the drayage industry.

[57] The Commissioner found that off-dock trips attract the regulated rates established under the *Act* and the *Regulation*. The petitioner argued that the containers in question were not being moved directly to or from a marine terminal, and the lack of a connection to the Port of Vancouver meant that the *Act* did not apply to those moves. The Commissioner's consideration of this broader argument is addressed in the Original Decision and the Decision Notice and adopted in the Reconsideration Decision.

[58] The Commissioner began by stating the issue.

21. The question here is whether the movements of the Impugned Containers and Additional Impugned Containers between a rail facility and another Lower Mainland facility are captured under the *Act*?

[59] The Commissioner found as follows.

24. Simard does not understand that the fact that it has a license to access a marine terminal in the Lower Mainland also requires it to pay the rates set out in the Rate Order even when it is not accessing a marine terminal. I find Simard's suggestion that the only CTS [container trucking services] work captured by the *Act* is work directly associated with the reason a company requires a license (i.e., to access a marine terminal) is inconsistent with the legislative scheme.

...

35. The definitions of "facility" and "off-dock trips", along with the inclusion of off-dock trip rates, capture the locations and geographic areas between which off-dock trips are performed. Off-dock rates apply to licensees not just when they access a Lower Mainland marine terminal, but when they move a container to a "facility" as defined in the *Regulation* and captured in the off-dock rate tables ... of the Rate Order.

[60] The petitioner's view that a container must be moved to or from a marine terminal to attract the off-dock rate would make the inclusion of off-dock rates in the rates first set by the lieutenant governor in-council (the "LGIC"), and now by the Commissioner, meaningless. By definition, all off-dock trips are between two facilities in the Lower Mainland (excluding marine terminals) and if the petitioner's interpretation were adopted, no such container movement would ever attract an off-dock rate.

[61] Both the historical context above and the legislative scheme as a whole make clear that while the *Act* requires companies who perform container trucking services through a marine terminal to be licensed, it also require licensees to comply with the legislation more broadly, including by paying off-dock rates for containers that move between facilities within the Lower Mainland that do not involve a marine terminal.

[62] In coming to this conclusion, the Commissioner analyzed the relevant statutory provisions, the legislative scheme as a whole including its object and purpose, prior decisions, and the historical context and policy related to his mandate. It would appear that the Hansard extracts were not considered. However, Hansard is not determinative: *Aheer BCCA* at para. 30. It is the legislative provisions that are the focus of the interpretative analysis. It must also be noted that the petitioner did not expressly rely on the Hansard evidence in its submissions or refer to them in its petition. To the extent that Hansard shows an intent to avoid the application of the scheme to "non-port-related" work, that intent is reasonably interpreted by the Commissioner as having been legislatively crystalized in the definition of "container", as discussed below. A failure to consider the Hansard evidence, in the circumstances of the analysis required to be undertaken by the Commissioner in this matter is not patently unreasonable.

[63] The Commissioner's statutory analysis was guided by the modern approach to statutory interpretation. He interpreted the words of the *Act* and the *Regulation* in their entire context, in their ordinary sense and harmoniously with the scheme of the *Act*. He summarized the key legislative provisions. He found that trips to the intermodal facilities were captured by the definitions of "facility" and "off-dock trips" and the existence of off-dock rates.

[64] Turning to the object and purpose of the regulatory scheme, the Commissioner noted that the legislative objective of including off-dock rates was to address the undercutting of rates for drivers who did both on-dock and off-dock work, supporting stability in the drayage sector.

[65] Looking at the historical context, the Commissioner thoroughly examined the JAP and the Ready/Bell Report, both of which addressed off-dock moves and noted that under-compensation for off-dock moves contributed to labour instability.

[66] Prior to the release of the Ready/Bell Report, British Columbia committed in the JAP to put in place mechanisms to ensure that off-dock trips are compensated consistently with revised regulated rates.

[67] As highlighted by the Ready/Bell Report, the rate undercutting prevalent throughout the drayage industry for both on-dock and off-dock trips was one of the primary reasons for the 2014 labour disruption. To prevent future labour disruptions, the Ready/Bell Report recommended setting minimum rates for off-dock trips by way of a time/distance benchmark matrix. The Commissioner cited the Ready/Bell Reports definition of off-dock trips, which included trips to rail yards, and trip legs that do not involve a port terminal. Some of these recommendations were adopted by the legislature and in the regulation, some were not. The Commissioner emphasized that the Ready/Bell Report recommendations were "limited to those companies that hold a license to service the port but capture such companies for both on and off-dock container movements."

[68] In enacting the *Act*, the legislature intended to implement the commitments made by the Province of British Columbia in the JAP as well as the recommendations in the Ready/Bell Report. To realize that intention, the *Act* and the *Regulation* allow the Commissioner to set minimum rates for off-dock trips.

[69] The Commissioner also illustrated one of the important policy reasons reinforcing his findings. Limiting access to marine terminals relieves congestion and wait time, both of which contribute to industry stability. He apparently regularly receives complaints from non-licensees that it is unfair to restrict access to marine terminal business to licensees. The Commissioner explained that the quid pro quo for licensees is that they must pay the regulated minimum rates for off-dock work - in his view, this is part of the cost of access to marine terminals.

[70] The Commissioner summarized his findings on the legislative scheme in the Reconsideration Decision:

37. I am not persuaded by Simard's argument that the Commissioner lacks jurisdiction over the "domestic" repositioning of containers or for moves involving the transportation of "domestic goods" based on some implicit concept of "domestic moves" or based on Simard's interpretation of "container" and "facility."

...

39. I must also address the use of the terms "domestic repositioning" and "domestic move" and "domestic goods" and "marine goods" upon which Simard so heavily relies. These are not used or defined in the *Act* or the *Regulation* and I cannot find the terms in the Joint Action Plan ("JAP") or the Ready/Bell Report. Nor do the terms factor into the explicit exclusions used in the definitions. I note that that [sic] the regulatory definition of "off-dock trip" provides for only two exemptions to container movements between facilities: "off-dock trips" do not include on-dock moves or container movements within a facility. There is no exemption for "domestic" moves. The fact that these terms advanced by Simard are not contemplated or accounted for in any of these documents or the legislation - including alongside other exclusions - is in my opinion telling.

...

41. The connection between off-dock movements and the stability of operations at marine terminals is addressed in the Ready/Bell report cited at para. 28 of the Original Decision. The reality is that truckers who work for licensees do not just travel to and from marine terminals all day – they also “spend considerable time moving containers at off-dock facilities.”<sup>1</sup> The application of regulated off-dock rates to container movements within the

Lower Mainland was meant to ensure that drivers were paid for off-dock container trucking services performed by licensees.”

[71] Another point of contention from the petitioner’s point of view is the broad interpretation of “container” applied by the Commissioner. The Commissioner found that the definition of "container" provided in the legislative scheme captures containers that are not imminently going to or immediately coming from a marine terminal.

[72] The petitioner made four submissions to the Commissioner on the definition of "container", followed by a summary: submissions on the definition in the legislation; submissions respecting decisions of former Commissioners (which are addressed in a different section of the Reconsideration Decision); submissions on 53-foot containers; and submissions on Convention on Safe Containers (“CSC”) plates.

[73] The definition provided in the *Regulation* is broadly worded. "Container" means a metal box furnished or approved by an ocean carrier for the marine transportation of goods: *Regulation* at s.1(1).

[74] The petitioner argued that "[i]mplicit in this definition is that the containers are used for the marine transportation of goods." It went on to explain that the goods transported in the March Trips were "domestic goods," (a term of the petitioner's making).

[75] At the outset of his analysis, the Commissioner summarized his finding that the immediate use of the container is not determinative of whether a container fits within the definition set out in the *Regulation*. The Commissioner found that the petitioner's proposed definition contrasted with the statutory definition: "[t]he fact that a container is not immediately or imminently on the ocean does not on its own change the fact that the container is 'furnished or approved by an ocean carrier for the marine transportation of goods.'"

[76] The petitioner's position would mean that containers that are "furnished or approved by an ocean carrier for the marine transportation of goods" and are moved by licensees between facilities in the Lower Mainland would be in or out of the regulatory scheme depending on their immediate use (whether they are being used for on-dock or off-dock trips at any given time). This would require determining when exactly each metal box furnished or approved by an ocean carrier for the marine transportation of goods becomes a "container" ("turns into a pumpkin") and vice versa at every stage of its journey in the Lower Mainland.

[77] The Commissioner is concerned that the result of such an approach would be a multi-tiered (regulated and unregulated) rate structure and a perpetual battle to determine if each off-dock container movement is captured under the *Act* based on each container's travel route and the purpose of each movement. Auditors would be required to evaluate the travel route and purpose of each of the thousands of containers moved throughout the Lower Mainland each day and this would make off-dock enforcement complex.

[78] The Commissioner found that the LGIC could have defined "container" with reference to its immediate (or recent) use, as urged by the petitioner, but did not do so:

49. I do not agree that the definition of "container" should depend on how the container is being used at any given time. If the LGIC intended "container" to be defined based solely on its immediate use, it could have easily defined "container" as "a metal box in use for the marine transportation of goods." I note s. 7(1) of the *Interpretation Act* states that an enactment must be construed as always speaking and find that this applies to the definition of "container" - in other words, whether a metal box qualifies as a "container" cannot depend on where it is moving (or what it is carrying) at any given time. A metal box is either furnished or approved by an ocean carrier for marine transport, or it is not. Its status does not change on a daily basis based on how it is used or what it is carrying or whether it is carrying anything at all.

[79] While I might not have come to the same conclusion, I cannot say that this interpretation falls outside the realm of reasonable interpretation.

[80] The next issue addressed in the Reconsideration Decision is the application of the definition of "container" in practice. How does the Commissioner determine if a

container has been furnished or approved by an ocean carrier for the marine transportation of goods?

[81] The petitioner submitted that the presence of a CSC plate on a container did not indicate that the container had been approved by an ocean carrier for the marine transportation of goods. The petitioner submitted that the CSC plate is issued by an international body, not an ocean carrier.

[82] The Commissioner began his analysis by providing a list of indicia that could indicate that a container had been furnished or approved by an ocean carrier for the marine transportation of goods, including a valid CSC plate.

[83] Then, the Commissioner addressed and rejected the petitioner's submissions, noting that the emails provided by the petitioner supported the usefulness of a CSC plate as an indicator that the container was furnished or approved by ocean carriers for the marine transportation of goods. He clearly and thoroughly went through the utility of a CSC plate from start to finish:

52. I do not accept Simard's submissions that the CSC plate, because it is not issued by ocean carriers but rather by an international regulatory body, is meant only to protect "human life in the transport and handling of containers" and does not speak to whether a container is built to standards allowing it to be used for the marine transport of goods. The CSC plate includes specific details including the container's maximum operating gross weight and allowable stacking weight. In the photographs of the CSC plate for CP container identified as QDCM22G12064, it is explicitly stated that "maximum operating gross mass is "for sea transportation." The presence of such information suggests that the container is certified to carry goods up to a specified weight while being transported by an ocean carrier. This is support is Mr. Teixeira and Mr. Beatons' respective emails which expressly state that the CSC plate affixed to the CP Rail and Canadian Tire containers is there in case they want to move cargo in the container while it is being shipped over the ocean. In other words, the CSC plate is necessary to satisfy the ocean carrier that the container can be used to move goods on the ocean carrier. I find that the presence of a plate from an international regulatory body indicating that a container is safe to be loaded on a ship with a certain cargo limit assures ocean carriers that they can safely furnish or approve the container for the marine transport of goods. Simard's Reconsideration Submission largely (with the exception of those containers with expired CSC plates dealt with below) fails to rebut the presumption based on the indices of a container outlined above that that [sic] the Containers have been furnished or approved by ocean carriers for the marine transportation of goods and

instead relies heavily on what the customers - generally non-ocean carriers - chose to use the containers for on March 15, 2023.

[84] The petitioner submitted that 53-foot containers were not furnished for ocean transportation of goods, because they arrived from China on a ship, only occasionally laden with goods, and then were used for "domestic" purposes.

[85] The Commissioner did not accept this submission. He found that a container's dimensions are not relevant to the definition, and that while some 53-foot containers may not be "furnished" for the marine transportation of goods, the fact that they arrived on an ocean carrier, possibly laden with goods, and carried a CSC plate, meant that they were approved for the marine transport of goods.

[86] However, the Commissioner went on to find that, unless renewed, CSC plates expire 30 months after the manufacture of the container. He held that containers with expired CSC plates did not meet the definition of "container" in the *Regulation*. "My logic here is that a container without a valid CSC plate will no longer be capable of circulating through marine terminals because it cannot be furnished or approved by an ocean carrier for the marine transport of goods." This would appear to take into consideration the petitioner's concern that containers, once found to qualify as a "container" under the scheme, would never be able to escape the effects of the *Regulation*.

[87] The Commissioner found that the definition of "container" includes all containers that are furnished or approved by an ocean carrier for the marine transportation of goods, regardless of a container's immediate use. I cannot say that such an interpretation is patently unreasonable given the analysis undertaken by the Commissioner.

[88] The petitioner has not pleaded the Commissioner's decision on the basis that the Commissioner's interpretation of "facility" is incorrect, and it therefore should stand.

[89] In the Reconsideration Decision, the Commissioner rejected the petitioner's submission that the definition of "facility" was restricted to locations where a container is dealt with for marine shipping. The Commissioner interpreted the statute and considered policy grounds. The Commissioner started his analysis by pointing out that the petitioner's argument would make the administration of the scheme impossibly complex:

60. Licensees move thousands of containers throughout the Lower Mainland each day and those containers are "stored, loaded, unloaded, transloaded, repaired, cleaned, maintained or prepared for shipping" in hundreds of locations within the Lower Mainland. If the OBCCTC had to confirm whether each container at each location was being "stored, loaded, unloaded, etc." for marine shipping or for another type of shipping in order to determine whether the location was a "facility," its auditors would be bogged down in an endless paper trail.

[90] The Commissioner looked at the history behind the regulatory scheme, noting that the CN and CP rail yards were included in the JAP and Ready/Bell Report and in the off-dock rate table, as well as other locations only accessible by truck. This underscored his finding that "shipping" in the definition of "facility" was not limited to "marine shipping".

[91] The Commissioner found that the legislature's decision to exclude the term "marine terminal" from the definition of "facility" supports the broader interpretation of "shipping" in the definition of "facility".

[92] The Commissioner concluded his analysis of "facility" by referring back to the "beneficial purposes of the *Act*, which clearly include compensating truckers while they are performing off-dock container trucking services."

[93] The Commissioner rejected the petitioner's argument that the March Trips were not "prescribed container trucking services" and therefore the Commissioner had no jurisdiction over them. The petitioner submitted that the regulated rates established by the Commissioner under s. 22 of the *Act* and the requirement set out in s. 23 of the *Act* that licensees pay the regulated rates apply only to prescribed

container trucking services. Prescribed container trucking services are those that require access to a marine terminal: *Regulation* at s. 2(1).

[94] The Commissioner undertook an analysis of s. 22 of the *Act*. Section 22 does not limit the Commissioner (and did not previously limit the LGIC) to setting rates only for containers going to and from marine terminals. He found his rate setting authority in s. 22 "clearly" allowed him to set rates for off-dock trips, as the LGIC had also done:

66. To interpret s. 22 of the *Act* in the manner advanced by Simard would have left the LGIC (and subsequently the Commissioner) unable to regulate off-dock rates for container movements outside a marine terminal for the simple reason that off-dock movements do not transit through a marine terminal.

[95] The Commissioner found that the term "prescribed trucking services" is used expressly for the licensing requirement in s. 16 of the *Act* and does nothing to alter his rate-setting authority over off-dock trips. Had the legislature intended the container trucking services prescribed by s. 2 of the *Regulation* to apply to s. 22 of the *Act*, he found that s. 22 would have been mentioned alongside s. 16(1).

[96] The Commissioner rejected the petitioner's argument that because corporate restructuring could facilitate an end-run around the off-dock rates, the legislature must not have given him the jurisdiction to impose them in the first place:

69. Simard suggests that the legislature could not have meant for the *Act* to extend beyond "prescribed" container trucking services because a simple corporate restructuring would allow licensees to avoid the off-dock rates. I cannot accept that the presence of loopholes in any legislation means that the legislature did not intend to capture the very thing a person is trying to avoid by using said loophole. I note that the effort to create a fair and equitable tax scheme is paved with opportunistic loopholes that are then closed.

[97] In the Reconsideration Decision, the Commissioner also addressed a point raised in the Simard Injunction Decision. In looking at a prior industry advisory, the Court noted that a statement made in that advisory could be understood to mean that a container movement that is wholly unrelated, directly or indirectly, to the

movement of containers through a marine terminal is outside the scope of the regulatory scheme.

[98] The Commissioner addressed this point by returning to the definition of "container" provided in the *Regulation*:

73. ... As will be clear from this reconsideration, licensees engaged in container moves that are "indirectly" or "at some stage" related to a marine terminal are caught by the *Act*. As a result, most, if not all, container movements in the Lower Mainland by licensees will be covered by the *Act*.

74. In terms of the possibility of container movements that are "wholly unrelated" to a marine terminal, where a metal box does not have the indices of a "container" outlined in the Original Decision, [see paras 42 - 46 of the Original Decision] the movement of that metal box is likely to be "wholly unrelated" to a marine terminal since the metal box cannot and will not travel through a marine terminal.

75. All metal boxes that come through a marine terminal when they arrive in North America have been furnished or approved by an ocean carrier for the marine transport of goods and are therefore "containers" under the *Act*. Their status as "containers" confirms they are "related" to a marine terminal. If that alone did not make them "containers" then the question would become: how many steps removed from a marine terminal does a container have to be before it is no longer "indirectly related" to a marine terminal? How many trips after, or in advance of, a trip to a marine terminal would be required to make a trip "wholly unrelated" to a marine terminal?

[99] The Commissioner determined that the line between "wholly unrelated" and "indirectly related" would be so difficult to draw that enforcement of off-dock rates would become significantly hampered. Further, the Commissioner found that this approach would be contrary to his interpretation of the other relevant definitions, and that it would compromise the audit and enforcement capacity of his office and ultimately derogate from the purpose of the *Act*.

[100] The Commissioner further accepted that the petitioner may have been under some misapprehension about whether 53-foot containers met the definition in the *Regulation* as a result of changes in their manufacture and supply. Although the Commissioner noted that "53-foot containers may now be capable of being furnished or approved by an ocean carrier for the marine transportation of goods and therefore captured by the *Regulation*," he varied his order such that the petitioner did not need

to review its payroll records respecting 53-foot containers, and did not need to pay its truckers for the movement of 53-foot containers.

**Conclusion**

[101] The Commissioner's analysis is extensive, transparent, justified and intelligible. It was open to the Commissioner to interpret and apply the legislative scheme as he did. Were this decision before me at first instance, I may have decided differently. However, I cannot say in these circumstances that it is patently unreasonable.

[102] The petition is dismissed.

**Costs**

[103] The Commissioner does not seek its costs. No costs are awarded in accordance with the general rule.

“Wilkinson J.”