

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *UTA Truckers Society of British Columbia
v. British Columbia Container Trucking
Commissioner,
2023 BCSC 2345*

Date: 20231221
Docket: S-238341
Registry: Vancouver

Between:

**UTA Truckers Society of British Columbia,
Baljinder Singh Sall also known as Tony Sall, and
Harbhagwan Singh also known as Harbhagwan Singh Dhillon**
Petitioners

And

**The British Columbia Container Trucking Commissioner also known as
The Office of the British Columbia Container Trucking Commissioner,
and The Attorney General of British Columbia**
Respondents

Before: The Honourable Mr. Justice Stephens

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners: S.A. Turner
B.S. Khatra

Counsel for the Respondent British
Columbia Container Trucking
Commissioner: T. Bant
K. Kotliarsky

Counsel for Simard Westlink Inc.: D.S. Penner

No other appearances

Place and Date of Trial/Hearing: Vancouver, B.C.
December 21, 2023

Place and Date of Judgment: Vancouver, B.C.
December 21, 2023

[1] **THE COURT:** The applicants have filed a petition for judicial review in this proceeding on December 7, 2023, seeking relief as against decisions made by the British Columbia Container Trucking Commissioner (the “Commissioner”), as set out in paras. 1 through 9 of the petition.

[2] Before me is a notice of application brought expeditiously for injunctive relief which was filed on December 8, 2023. The applicants seek an order pending the hearing of their petition, enjoining, restricting, and/or prohibiting the Commissioner from:

- a) allocating new (as opposed to revoked or vacant), Truck Tags to CTS Licensees;
- b) changing revoked Truck Tags previously designated as “I/O Tags” to “Company Tags” and *vice versa*; and
- c) adding new individuals to the “I/O List” maintained by the Commissioner, unless the Commissioner shall first have published a request for applications and otherwise followed his Truck Tag Management Policy with respect to additions to the I/O List.

[3] That relief is slightly different than as set out in the notice of application, but has been modified and articulated in para. 1 of the Written Argument of the petitioner applicants in this matter.

[4] Briefly, this application centrally concerns the process of the Commissioner issuing tags to licensees. The issuance of tags was discussed in the *Port Transportation Association v. The Office of the British Columbia Container Trucking Commissioner*, 2022 BCSC 387 at paras. 5 to 6, which I refer to by way of background.

[5] The petitioner, UTA Truckers Society of British Columbia (“UTA”), is a society comprised of individual owner operators, or I/Os, who work in the Lower Mainland’s container trucking industry. They say that roughly 450 I/Os are members of the UTA.

The other petitioner applicants, Baljinder Singh Sall and Harbhagwan Singh, are members of the UTA.

[6] One species of tags that may be issued and used is called an “I/O Tag,” which is to be contrasted with another sort of tag called a “Company Tag.”

[7] In November 2023, the Commissioner issued a call for applications for the issuance of tags. To date, the Commissioner has issued three provisional tags, which have a duration of three months, to Simard Westlink Inc., but as of yet has not issued any other tags.

[8] Turning to the test for an injunction, I shall assess this application for injunctive relief on the basis that it is an application for the usual interim or interlocutory prohibitory injunction. There is a three-part test for an injunction: first, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried; second, it must be determined whether the applicant would suffer irreparable harm if the application were refused; and, third, an assessment must be made as to which of the parties would suffer the greater harm from the granting or refusal of the remedy pending a decision of the merits, known as the balance of convenience: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at para. 48, 1994 CanLII 117, *British Columbia (Attorney General) v. Wale*, 9 B.C.L.R. (2d) 333, 1986 CanLII 171 (C.A.), aff'd [1991] 1 S.C.R. 62, 1991 CanLII 109, and *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395.

Fair Issue to be Tried

[9] The test at the preliminary merit stage is a low hurdle. The court makes an assessment on a preliminary basis of the merits of the underlying proceeding. In this case, the petitioners contend that, among others, the following issues arise as fair issues to be tried, and they set this out at para. 13 of the Legal Argument portion of their Written Argument:

- a) Was the July 2022 Additional Truck Tag Process a patently unreasonable exercise of the Commissioner's discretion pursuant to the Truck Tag Management Policy?
- b) In the face of its own Truck Tag Management Policy, in particular the prohibition against "converting" I/O Tags to Company Tags, is it open to the Commissioner to effectively redesignate I/O Tags as Company Tags?
- c) Does the Commissioner have jurisdiction to allocate additional Truck Tags to CTS Licensees or facilitate the addition of non-tag truckers to the I/O List in settlement of litigation and challenges to its enforcement decisions against CTS Licensees, or is this a patently unreasonable exercise of its discretion?
- d) Is it open to the Commissioner to issue tags, even provisionally, to I/Os not on the I/O List, when there is insufficient work for I/Os on the List, or is this a patently unreasonable exercise of its discretion?

[10] Having regard to the low threshold of the merits on such an application as this, I am satisfied that the petitioners have raised a fair issue to be tried for the purposes of this application.

[11] I find that the fact that a judicial review was not filed by the petitioners within 60 days of the July 2022 process does not, for the purposes of this application, mean there is no fair issue to be tried, though I express no view on this matter other than for the purposes of this application and the preliminary merits assessment.

Irreparable Harm

[12] The applicants assert that they would suffer irreparable harm if the relief sought is not granted. The applicants seek to draw a nexus between the past and potential issuance of new tags; the issuance of Company Tags; the potential addition to the I/O List (see the relief sought at para. 1(a) through (c) of the petitioners' Written Argument); and a corresponding dilution of work available to the

UTA's I/O members and the individual petitioners who are participants in the industry through truck tags.

[13] But I find that, given the currently large number of outstanding tags (approximately 1,570), and that only 30 tags are currently proposed to be potentially issued by the Commissioner further to the November 2023 process, and that the Commissioner has not issued any tags to date other than the three provisional tags, that nexus which the applicants seek to draw between potential decisions the Commissioner may make in the future with respect to tag issuance or addition to the I/O list and corresponding consequential harm to them through loss or continued lack of work is not strong. Nor is there a strong nexus between past decisions the Commissioner has made and harm to the I/O drivers.

[14] I note, among other things, that there is evidence before me that there has been an economic downturn in 2023 which has directly impacted the number of containers being transported: Affidavit #1 of Gaganpreet Singh Kaila at para. 110.

[15] While I find that the petitioner applicants have established a foundation for harm which cannot be compensated in damages, I find on the evidence that irreparable harm is not strong.

Balance of Convenience

[16] On the balance of convenience, I must consider, among other things, the public interest. While the facts in the case before me are different from that in *Simard Westlink Inc. v. Office of British Columbia Container Trucking Commissioner*, 2023 BCSC 2007 [*Simard Westlink*], I find certain comments made by the Court in that case to be apposite, particularly at paras. 87 through 89:

[87] Finally, I note that the public interest considerations are of central importance in weighing the balance of convenience in the circumstances of this regulatory scheme. In *Can. American* at para. 76, Justice Ker said:

[76] Here the considerations include the public interest in the efficacy and enforcement of a regulatory scheme that is designed to benefit the public. . .

...

[88] ... the Commissioner is entitled to considerable deference in interpreting its home statute. The Commissioner also stands in a privileged position *vis-à-vis* the court when it comes to understanding how the Commissioner's determinations impact the dynamics of what is happening on the ground in the marine shipping container trucking industry in the Lower Mainland.

[89] Given the very important purposes of the regulatory scheme as outlined by Justice Ker, it is my view that this factor weighs heavily in considering the public interest component of the balance of convenience.

...

See also *GRL Freightways Ltd. v. The British Columbia Container Trucking Commissioner*, 2023 BCSC 1331 at paras. 10–11.

[17] I find para. 89 of the *Simard Westlink* case particularly applicable to the application before me:

Given the very important purposes of the regulatory scheme ... this factor weighs heavily in considering the public interest component of the balance of convenience.

[18] I find that weighing the public interest in the balance of convenience against the petitioners' asserted irreparable harm, the balance of convenience weighs against the granting of the injunctive relief sought.

[19] I add that I have not found it necessary to consider whether the petitioners have standing for the purposes of the petition and make no finding and express no opinion on that issue, nor do I express any opinion on whether the petition is, or is not, premature.

[20] In summary, I find that it would not be just in all the circumstances to grant the injunction sought.

Order Granted

[21] Despite the submissions of counsel for the petitioners, the application for relief set out in the notice of application filed December 8, 2023 is dismissed.

[22] [SUBMISSIONS ON COSTS]

[23] THE COURT: All right. Thank you, counsel, for your submissions. I find in this case, including in view of the respondent Commissioner's position and also hearing submissions from the petitioners, that each party shall bear their own costs.

[24] I thank counsel for their submissions. Unless there is anything further, we are adjourned.

"Stephens J."