# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Aheer Transportation Ltd. v. Office of the British Columbia Container Trucking Commissioner,* 2018 BCCA 210

Date: 20180530
Docket: CA44623

Between:

**Aheer Transportation Ltd., Bestlink Transport Services Inc., Burton Delivery Service Ltd., Gantry Trucking Ltd., Gur-ish Trucking Ltd., Indian River Transport Ltd., Roadstar Transport Company Ltd., Sunlover Holding Co. Ltd., Triangle Transportation Ltd., and T S D Holding Inc.**

Appellants
(Petitioners)

And

**British Columbia Container Trucking Commissioner, The Attorney General of British Columbia and Unifor Local Union No. VCTA**

Respondents
(Respondents)

Before: The Honourable Madam Justice Bennett
The Honourable Mr. Justice Harris
The Honourable Mr. Justice Hunter

On appeal from: An order of the Supreme Court of British Columbia, dated June 30, 2017 (*Aheer Transportation Ltd. v. Office of the British Columbia Container Trucking Commissioner*, 2017 BCSC 1111, Vancouver Docket S161081).

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| Counsel for the Respondents British Columbia Container Trucking Commissioner and The Attorney General of British Columbia: | K. Horsman, Q.C.<br>A.K. Harlingten |
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| Place and Date of Hearing: | Vancouver, British Columbia<br>March 1, 2018 |
| Place and Date of Judgment: | Vancouver, British Columbia<br>May 30, 2018 |

**Written Reasons by:**
The Honourable Mr. Justice Hunter

**Concurred in by:**
The Honourable Madam Justice Bennett
The Honourable Mr. Justice Harris

***Summary:***

*Two trucking companies appeal the decision that retroactive rates for truckers were authorized by the enabling legislation. Held: Appeal dismissed. Applying a contextual approach to the interpretation of statutes, the Act authorizes the regulation that imposes the retroactive rates.*

**Reasons for Judgment of the Honourable Mr. Justice Hunter:**

[1] In February 2014, container truck drivers who provided services to the Port of Vancouver withdrew their services over ongoing disputes concerning their rates of remuneration. This walkout represented the third time in 15 years that the drivers had withdrawn their services. These work stoppages were economically disruptive in the drayage industry (the transportation of containerized cargo by trucking companies to and from an ocean port). As a result, both the provincial and federal governments engaged in extensive negotiations with industry to resolve the 2014 walkout and restore stability to the sector.

[2] The result of these negotiations was the creation of a 15-point joint action plan (the “Joint Action Plan”) in March 2014. The Joint Action Plan was designed to provide increased compensation for the truckers. On the basis of that plan, the truckers resumed work on March 27, 2014.

[3] A subsequent report in September 2014 recommended that a provincially regulated agency be established to, among other things, set remuneration and fuel surcharge rates for the drayage sector. In October 2014, the Government of British Columbia introduced legislation to establish a British Columbia Container Trucking Commissioner. Initial compensation rates for truckers would be set by regulation, but could later be amended and fixed by the Commissioner.

[4] The *Container Trucking Regulation*, B.C. Reg. 248/2014 came into effect on December 22, 2014, the same day as the *Container Trucking Act*, S.B.C. 2014, c. 28. The *Regulation* set trip rates with a starting date of April 3, 2014 and in the case of the increased fuel surcharge, March 27, 2014.

[5] This appeal concerns the legality of the initial rates set by the *Container Trucking Regulation* [the "*Regulation*"].

[6] The respondents say that these rates were intended to begin on the specified dates in order to meet the commitments of the Joint Action Plan, in reliance on which the truckers ended their 2014 walkout. The appellants say that for the rates to have that effect would offend the presumption against retroactivity.

[7] There is no doubt that the *Regulation* is intended to have retroactive effect. The question is whether the enabling legislation is sufficient to authorize this retroactive effect, or whether the presumption against retroactivity operates to invalidate the *Regulation* insofar as it purports to apply to a date prior to the effective date of the *Regulation*.

[8] In my opinion, this question must be answered by reading the statutory provisions in the context in which the legislation was enacted. This context includes the circumstances in which the legislation was passed, statements made in the Legislature as to the purpose of the retroactive elements of the legislative scheme, and the degree to which the *Container Trucking Act* and the *Regulation* form an integrated statutory scheme.

[9] For the reasons that follow, it is my opinion that having in mind these contextual factors, the *Container Trucking Act* authorizes the retroactive elements of the *Container Trucking Regulation*. Accordingly, I would dismiss the appeal.

## Background to the Legislation

[10] The following overview provides the context for the enactment of the provincial *Container Trucking Act* and the *Regulation* in December 2014.

### *1999 Dispute*

[11] In 1999, truck drivers, frustrated by low rates of compensation and dysfunctional operating practices that limited driver productivity, withdrew their services and Vancouver ports shut down between July 22 and August 23, 1999.

The dispute ended following the implementation by Vancouver Port Authority (which is now called Port Metro Vancouver) of a licensing system that required trucking companies to sign a memorandum of agreement ("MOA 1999") in exchange for access to the port terminals.

[12] MOA 1999 provided for increased trip rates for independent owner-operators to be followed at a later date by the adoption of hourly rates.

[13] In response to the operational concerns, Port Metro Vancouver established a number of committees, including the Container Stakeholder Working Group, the Container Terminal Scheduling Committee, and the Empty Container Dynamics Study Committee, to address port inefficiencies with the goal of increasing the productivity of terminal and trucking operations.

[14] Despite the efforts to resolve the issues underlying the 1999 dispute, many of the problems persisted. Notwithstanding MOA 1999, most trucking companies reverted back to trip based rates for independent owner-operators within weeks to months of the agreement to move to hourly rates.

***2005 Dispute***

[15] Another dispute arose in 2005, resulting in approximately 1000 independent owner-operators and 200 company drivers withdrawing their services. The main grievances were wage undercutting and the industry's lack of response to increased fuel costs.

[16] In an effort to resolve the dispute and the work stoppage that was resulting in hundreds of millions of dollars in losses to the economy and serious damage to the reputation of Vancouver's ports, the provincial and federal governments jointly appointed Vince Ready, who, working with Peter Cameron as facilitators, released a new memorandum of agreement ("MOA 2005") in July 2005.

[17] MOA 2005 reflected the truckers' agreement to resume work on or before August 2, 2005, provided trucking companies would pay truckers at stipulated minimum per trip rates on their return to work, with a further schedule of rates to come into effect in 2006. These prescribed rates are referred to in the industry as the "Ready Rates". MOA 2005 also provided that truckers would be paid a one percent fuel surcharge if average fuel prices exceeded $1.05 per litre in any quarter.

[18] The federal government subsequently issued *Order Amending the Order Authorizing Negotiations for the Settlement of the Dispute Causing the Extraordinary Disruption of the National Transportation System in Relation to Container Movements into and out of Certain Ports in British Columbia*, P.C. 2005-1365, (2005) C. Gaz. II, 1823, on August 4, 2005, directing Port Metro Vancouver to implement MOA 2005 as a condition of licensing trucking companies. Thereafter, a truck licensing system was established for a period of two years and drayage operations recommenced in Vancouver ports.

[19] In addition to these measures, the federal and provincial governments established a task force to provide recommendations aimed at avoiding future work stoppages. The federal government also undertook measures to ensure compliance with the minimum rate floor stipulated in MOA 2005, and in 2006, the Federal Cabinet enacted s. 31.1(2)(b) of the *Port Authorities Operation Regulation*, SOR/2000-55, enacted under *Canada Marine Act*, S.C. 1998, c. 10, which imposed a legal obligation on Port Metro Vancouver to ensure that the Ready Rates were complied with. In July 2007, the Federal Cabinet amended the *Port Authorities Operation Regulation* to make compliance with the minimum rates of remuneration a requirement for non-unionized companies using independent operators, as MOA 2005 was expiring in August of that year.

[20] Several other initiatives were also undertaken to address the concerns underlying the 2005 dispute. The provincial government established the Container Truck Dispute Resolution Program in 2007 to ensure compliance with the minimum rates; Port Metro Vancouver began working with the provincial government to improve enforcement of the licensing provisions; a moratorium on the issuance of new licenses or permits to independent owner-operators not operating at the port within a certain timeframe was established; a two-tier licensing system was implemented; the Vancouver Port Container Truck Steering Committee was created; and Port Metro Vancouver launched a stakeholder engagement process.

***2014 Dispute***

[21] Despite these initiatives, the issues underlying the previous disputes persisted, and in February 2014, a substantial group of unionized and non-unionized container truckers stopped servicing Port Metro Vancouver, in response

to what they perceived to be a persistent and consistent pattern of trucking companies undercutting the Ready Rates.

[22] On March 6, 2014, Vince Ready and Corinn Bell were appointed to conduct an independent review directed at resolving the dispute.

[23] Port Metro Vancouver and the provincial and federal governments met with worker representatives which included United Truckers' Association and Unifor. These discussions led to the 15-point Joint Action Plan (dated March 26, 2014), which set out commitments in exchange for the truckers' agreement to immediately return to work. The following paragraphs of the Joint Action Plan provide necessary background for the legislative scheme at issue in these proceedings:

> 2. The Government of Canada commits to take appropriate measures to increase trip rates by 12% over the 2006 Ready Rates. The rates will take effect within 30 days of the return to work and will apply to all moves of containers (whether full or empty). To make drivers whole for the interim period between 7 days following the return to work and the date the new rates take effect, a temporary rate increment will be put in place.
>
> These rates shall be calculated on a round trip basis, and shall apply to all moves. A mechanism will also be established to attach a benchmark minimum rate for all hourly drivers to the federal regulation. The rate is anticipated to be initially instituted at $25.13 on hire and $26.28 after one year of service. …
>
> 4. As per the current federal regulation, upon return to work the fuel surcharge multiplier will be amended from 1% to 2% which will result in a 14% fuel surcharge immediately upon a return to work. …

[24] On March 27, 2014, the truck drivers and owner-operators who had withdrawn their services returned to work. The effect of this was that the effective date for the "rate increment" under the Joint Action Plan was seven days later, or April 3, 2014 and the effective date for the new fuel surcharge was March 27, 2014.

[25] On April 3, 2014, Parliament amended s. 31.1 of the *Port Authorities Operation Regulation*. Section 31.1(1) provided that the Vancouver Fraser Port Authority would not permit unlicensed trucks or road transportation equipment to access its port for the purposes of delivery, pick-up, or movement of containers, and licence holders were required to comply with minimum conditions. The amended minimum conditions included that, in the absence of a collective agreement or any applicable law, the licence holder must ensure that

remuneration of an owner-operator be in accordance with the rates set out in MOA 2005, plus an increase by an amount prescribed by subsection 2.1. Subsection 2.1 reflected the commitments made in the Joint Action Plan by providing for the 12% increase over the 2006 Ready Rates as well as the increased fuel surcharge.

[26] In *Recommendation Report – British Columbia Lower Mainland Ports* (the "Ready/Bell Report"), published in September 2014, Vince Ready and Corinn Bell concluded that many of the issues underlying the 1999 and 2005 disputes persisted in 2014, including frustration with inefficient operations of the ports, low remuneration rates, and inadequate fuel charges. The report also confirmed that rates had decreased since 2006 for most drivers due to undercutting of the Ready Rates that had largely gone unenforced.

[27] The Ready/Bell Report issued a number of recommendations, including that a provincially regulated agency be created to oversee licensing of trucks and the enforcement and setting of remuneration and fuel surcharge rates in the drayage sector; that any rates not paid in accordance with the Joint Action Plan to date were owed to drivers; and that Port Metro Vancouver should continue with its licensing system reform to deal with concerns, including the over supply of trucks, while the provincial agency was being constituted.

[28] The provincial government acted promptly, and on October 23, 2014, approximately a month after publication of the Ready/Bell Report, the provincial Minister of Transportation and Infrastructure introduced new legislation.

[29] The intent of the legislation, and in particular the intention that the new rates were to be retroactive, was explained by Minister Stone during debate in the British Columbia Legislature concerning s. 22(2) (British Columbia, Legislative Assembly, *Debates of the Legislative Assembly (Hansard)*, 40th Parl., 3rd Sess., Vol. 17 No. 10 (18 November 2014) at 5371). After explaining that "our number one priority here is to fulfil the commitments that have been made in good faith to the truckers", he responded to a question about the intended retroactivity in this way:

> C. Trevina: Going on to [s. 22](2), this is where the minister says the retroactivity will come in. How broad is the retroactivity? Is it going back to April? From the point of the legislation coming into force? How is this actually going to work in the real world?
>
> Hon. T. Stone: With respect to the fuel surcharge, the retroactive date or the start date would be March 27, 2014. For all other rates – the hourly and

trip rates – April 3 would be the retroactive date.

[30] While not determinative, this type of evidence can be useful in confirming the purpose of the legislation: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 35.

[31] As noted earlier, the new legislation came into force on December 22, 2014, as the *Container Trucking Act*. The *Regulation* also came into effect on the same day.

**The Statutory Scheme for Rates**

[32] This appeal concerns the interplay between s. 22 of the *Container Trucking Act* and Part 4 of the *Regulation*.

[33] Sections 22 (1) and (2) of the *Container Trucking Act* read as follows:

> 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.

[Emphasis added.]

[34] Relevant provisions of the *Regulation* include ss. 19, 22 and 23, which read as follows:

**Back pay**

19 (1) On the date this regulation comes into force, it is a condition of every licence that the licensee pay each trucker who performed an on-dock trip on behalf of the licensee on or after April 3, 2014 any amounts owed under this section.

(2) A trucker is owed the difference, if any, between the following:

(a) the amount the trucker would have been paid for container trucking services performed on behalf of the licensee on or after April 3, 2014 if this regulation had been in force on the date the container trucking services were performed;

(b) the amount the trucker was in fact paid for the container trucking services, not including amounts the trucker was paid as a fuel surcharge.

(3) An independent operator paid per trip is owed the difference, if any, between the following:

(a) the amount the independent operator would have been paid for any on-dock or off-dock trips performed on behalf of the licensee on or after April 3, 2014 if this regulation had been in force on the date the trip was performed;

(b) the amount the independent operator was in fact paid for the on-dock or off-dock trip, not including any amounts the independent operator was paid as wait time remuneration or fuel surcharges.

[am. B.C. Reg. 72/2015, s. 11.]

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**Back fuel surcharge for independent operators**

22 On the date this regulation comes into force, it is a condition of every licence that a licensee pay each independent operator who performed container trucking services on behalf of the licensee on or after March 27, 2014, the difference, if any, between the following:

(a) the amount the licensee would owe the independent operator in fuel surcharge if this regulation had been in force when the

> independent operator performed the container trucking services on behalf of the licensee;
>
> (b) the amount the licensee paid the independent operator for the fuel surcharge.
>
> ***
>
> **Wait time remuneration**
>
> 23 On the date this regulation comes into force, it is a condition of every licence that a licensee pay each trucker who performed container trucking services on behalf of the licensee on or after April 3, 2014, and is, or was, paid per trip, all amounts paid to the licensee as wait time remuneration.
>
> [Emphasis added.]

[35] It is apparent that the references in the *Regulation* to the dates of March 27, 2014, when the truckers went back to work, and April 3, 2014, seven days after the truckers went back to work, evince an intent to backdate or make retroactive trucking rates to the dates identified in the Joint Action Plan. The issue on this appeal is whether the *Container Trucking Act* authorizes a regulation that has retroactive effect.

## The Parties' Positions

[36] To be valid, regulations must be authorized by enabling legislation. The *Container Trucking Act* confers explicit authority on the Lieutenant Governor in Council to make regulations setting initial rates. The question before the chambers judge and now before this Court is whether that authority empowers Cabinet to fix rates that apply to activities undertaken before the regulation was in effect.

[37] The Attorney General relies on ss. 22(1) and (2) as authority for the retroactive rates, with particular reference to the provision in s. 22(2) that the initial rate "may be based on container trucking services provided before this section comes into force". In effect, the Attorney General argues that s. 22(2) should be read as authorizing an initial rate "[*in respect of*] container trucking services provided before this section comes into force".

[38] The position of the Attorney General is that the purpose of the legislative scheme was to honour the commitments that had been made to truckers to encourage them to end their walkout, which included increased compensation rates with immediate effect.

[39] The appellants submit that s. 22(2) in particular is ambiguous and does not with any clarity authorize retroactive rates. They say further that the statutory language “based on container trucking services” is unclear and could as easily relate to units of measurement as actual trip rates. The appellants then rely on the presumption against retroactivity in the interpretation of statutory instruments to argue that the *Container Trucking Act* provides authority to set rates prospectively only.

[40] The chambers judge rejected the appellants’ interpretation of s. 22(2) by reviewing the entire portion of the regulations at issue:

> [98] Section 19 states that a trucker or an independent operator is owed the difference between what they were paid between April 3, 2014 and the coming into force of the Regulation and what they would have been paid for those services if the Regulation had been in effect during that period. Section 22 takes the same approach to the amount of fuel surcharges that would have been owed to an independent operator if it had been in force. The initial minimum rate and fuel surcharges are therefore “based on” these earlier services and surcharges, in the sense that the work done and fuel costs before the Regulation took effect are, by the operation of s-s (2), made part of the work done and fuel costs that are specified as being the basis of the measurements under s. 22 of the Act. In other words, the scope of those measurements has been expanded -- to encompass activities and expenses that would have fallen within them if the Regulation had been in effect.

[41] The parties agree that the conclusion that the *Regulation* is authorized by the statute is reviewable on a standard of correctness.

## Analysis

[42] The appellants’ argument relies heavily on the presumption against retroactivity and the unclear nature of s. 22(2). I agree with the appellants that s. 22(2) is unclear. Standing alone, it would be challenging to interpret the subsection in the way urged by the Attorney General. But statutory provisions are not interpreted on a stand-alone basis; they are interpreted in context. For many years, the Supreme Court of Canada has emphasized contextual interpretation as the “modern approach to interpretation”.

### *Contextual Approach to Interpretation*

[43] This modern approach was articulated by the Court in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42:

> [26] In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings … I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".
>
> [27] The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6, "words, like people, take their colour from their surroundings". …
>
> [Citations omitted.]

[44] The reference to Professor Willis' seminal article in 1938 is a reminder that what is referred to as the "modern approach" of contextual interpretation has a long history in the construction of statutes. In *Upper Canada College v. Smith* (1920), 61 S.C.R. 413, Justice Duff explained the relationship between the presumption against retroactivity and contextual interpretation in this way (at 418):

> As Parke B. said in *Moon v. Durden* [(1848), 2 Ex. 22 at 42-43], the rule is "one of construction only" and "will certainly yield to the intention of the legislature"; and <u>that intention may be manifested by express language or may be ascertained from the necessary implications of the provisions of the statute, or the subject matter of the legislation or the circumstances in which it was passed</u> may be of such a character as in themselves to rebut the presumption that it is intended only to be prospective in its operation.
>
> [Emphasis added.]

[45] This approach was summarized in *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, in these terms:

> [9] As this Court has reiterated on numerous occasions, "[t]oday there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament". … This means that, as recognized in *Rizzo & Rizzo Shoes* "statutory interpretation cannot be founded on the wording of the legislation alone" (para. 21).
>
> …
>
> [12] … In interpreting legislation, the guiding principle is the need to determine the lawmakers' intention. To do this, it is not enough to look at

> the words of the legislation. Its context must also be considered.
>
> [Citations omitted.]

[46] The principle of contextual interpretation to construe statutes in accordance with purposes and objects of the legislation was applied directly to the determination whether a regulation is inconsistent with its enabling statute in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64:

> [24] A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (Guy Régimbald, *Canadian Administrative Law* (2008), at p. 132). This was succinctly explained by Lysyk J.:
>
> > In determining whether impugned subordinate legislation has been enacted in conformity with the terms of the parent statutory provision, it is essential to ascertain the scope of the mandate conferred by Parliament, having regard to the purpose(s) or objects(s) of the enactment as a whole. The test of conformity with the Act is not satisfied merely by showing that the delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.
>
> (*Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266, at p. 292 [B.C.S.C.])
>
> [25] Regulations benefit from a presumption of validity (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 458). This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them (John Mark Keyes, *Executive Legislation* (2nd ed. 2010), at pp. 544-50); and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires* (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (loose-leaf), at 15:3200 and 15:3230).
>
> [26] Both the challenged regulation and the enabling statute should be interpreted using a "broad and purposive approach . . . consistent with this Court's approach to statutory interpretation generally" (*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, at para. 8; see also Brown and Evans, at 13:1310; Keyes, at pp. 95-97; *Glykis v. Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285, at para. 5; Sullivan, at p. 368; *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64).

### *The Integrated Statutory Scheme*

[47] Where a statute and regulations form an integrated scheme to achieve a particular object, review of the regulation can assist in determining the legislative purpose. This principle was explained by the Supreme Court of Canada in

*Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54:

> [35] … While it is true that a statute sits higher in the hierarchy of statutory instruments, it is well recognized that regulations can assist in ascertaining the legislature's intention with regard to a particular matter, especially where the statute and regulations are "closely meshed" (see *R. v. Campbell*, [1999] 1 S.C.R. 565, at para. 26; *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 282). In this case, the statute and the regulations form an integrated scheme on the subject of surplus treatment and the thrust of s. 70(6) can be gleaned in light of this broader context.

[48] The continuing vitality of this principle has been confirmed in *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para. 84 and was recently relied upon by this Court in *Carvalho v. British Columbia (Medical Services Commission),* 2018 BCCA 95 at para. 28.

[49] In the case at bar, the statute and the *Regulation* both came into effect the same day. They are "closely meshed" within the meaning of *Monsanto,* and together form an integrated scheme to carry out the evident intent of the legislature to honour the commitments made at the time the truckers' walkout ended in 2014.

***The Presumption against Retroactivity***

[50] The appellants have relied heavily on the presumption against retroactivity. Statutes are generally not to be construed as having retroactive operation unless such a construction is expressly or by necessary implication authorized by the Act: *Gustavson Drilling (1964) Limited v. Minister of National Revenue*, [1977] 1 S.C.R. 271 at 279. The reason for this presumption is that one must know what the law is in order to comply with the law: *Newton v. Crouch*, 2016 BCCA 115 at para. 54.

[51] The appellants propose an elaborate analytical framework for the interpretation of the legislation at issue based on a comparison of presumptions, but without reference to context. First, the appellants begin by acknowledging that subordinate legislation is presumed to be valid. Second, the presumption of validity is said to be rebutted once the petitioners show that the subordinate legislation is retroactive. Third, at that point the subordinate legislation is said to be presumptively invalid. Finally, the appellants submit that the presumption of invalidity of the regulation can be rebutted only if the presumption against retroactivity in the enabling legislation is rebutted.

[52] In my opinion, this analytical framework does not reflect the proper way to approach the interpretation of statutory instruments. The *Regulation* at issue is clearly intended to have retroactive effect. The only question is whether the enabling legislation authorizes the retroactive elements of the *Regulation*. If it does, the *Regulation* is valid and enforceable. If it does not, the *Regulation* is invalid to the extent of its retroactivity.

[53] Whether the enabling legislation authorizes the retroactive elements of the *Regulation* is a question of statutory interpretation. The objective of statutory interpretation is always to read the words of an Act in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the enacting legislature. The goal, in other words, is to give effect to the intention of the legislature by reading the statutory language in context.

[54] If the intention of the legislature can be fulfilled without retroactive operation, the presumption against retroactivity will operate to give the legislation prospective effect only. But if the purpose of the legislation can be achieved only by giving the legislative scheme retroactive effect, it is no answer to argue that the specific words used in the statute do not clearly convey that result.

[55] The appellants have argued that s. 22(2) is ambiguous, and that this ambiguity itself is sufficient to invoke the presumption against retroactivity. However, ambiguity of a particular statutory provision cannot be abstracted from a consideration of the object of the legislation. Justice Iacobucci discussed the relevance of ambiguity in *Bell ExpressVu Limited Partnership* at para. 29 in a passage relied upon by both parties:

> … In this regard, Major J.'s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids" (emphasis added), to which I would add, "including other principles of interpretation".
>
> [Emphasis added by Iacobucci J.]

[56] It follows from this that if the proposed reading of the statute (such as the appellants' interpretation of s. 22(2) as referring to units of measurement) cannot be regarded as equally in accordance with the purpose of the legislation as the respondents' construction of the statute, other principles of interpretation such as

the presumption against retroactivity cannot be invoked to defeat the purpose of the legislation.

[57] An illustration of the importance of reading the statutory scheme as a whole to determine legislative intention can be found in the case of *Nova, An Alberta Corporation v. Amoco Canada Petroleum Company Ltd.*, [1981] 2 S.C.R. 437. That case also had to do with retroactive rates. The question was whether a Public Utilities Board which had been given the power to "vary or confirm" rates set by a utilities company could do so retroactively. The statute itself did not confer such authority expressly, but the focus in the Supreme Court of Canada's reasons was on the statutory scheme and what Estey J. described as "the general legislative pattern it establishes" (at 448). In concluding that the Board could issue orders retroactively, at least until the date of the initiating complaint, Estey J. cited the following passage from *Re Eurocan Pulp & Paper Co. Ltd. and British Columbia Energy Commission et al.* (1978), 87 D.L.R. (3d) 727 (B.C.C.A.), where Chief Justice Farris of this Court stated:

> Reading the Act as a whole, it is my opinion that the Commission has been empowered to make rates effective to the date of application, even though there is no specific language in the Act to that effect.

[58] A similar approach was taken in *Québec (Attorney General) v. Healey*, [1987] 1 S.C.R. 158. In discussing whether a statute had retroactive effect, the Supreme Court of Canada said the following (at 177-178):

> It is clear that the *1919 Act* contains no express provision making it retroactive or giving retroactive effect to the amendment made to s. 2252 of the Revised Statutes, 1909.
>
> However, the legislator's intent can be deduced from the purpose of the legislation and the circumstances in which it was adopted. It can also be manifested by the procedure employed by the legislator. Finally, it may be inferred from the only possible interpretation which is likely to make sense of it.

[59] In the case at bar, there is language in the statute that appears to be intended to provide for trip rates to be set retroactive to the date one week after the truckers returned to work in accordance with the provisions of the Joint Action Plan. The statutory language is not particularly well worded, but the interpretation of this language is not wholly dependent on the literal meaning of the words used. The statutory meaning is to be determined by assessing that language in the context of what the legislature was intending to achieve with this legislation.

[60] Here, an integrated statutory scheme was created for the specific purpose of implementing the agreement made at the time of the Joint Action Plan to end the truckers' walkout in 2014 and restore stability in the drayage sector. This intention was well known at the time the walkout ended and was made clear during the consideration of the draft legislation. There is no substantial risk that those companies who are called upon to pay the rates will be surprised to discover that they are effective as of the dates set out in the *Regulation*. To interpret the legislation in a way that precludes the rates coming into effect before the statute was formally enacted would thwart the purpose of the legislative scheme.

[61] For these reasons, it is my view that the chambers judge was correct to dismiss the petition. Accordingly, I would dismiss the appeal.

"The Honourable Mr. Justice Hunter"

I AGREE:

"The Honourable Madam Justice Bennett"

I AGREE:

"The Honourable Mr. Justice Harris"