IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *GRL Freightways Ltd. v. The British Columbia Container Trucking Commissioner,* 2023 BCSC 1331

Date: 20230616
Docket: S249829
Registry: New Westminster

Between:

GRL Freightways Ltd.

Petitioner

And

The British Columbia Container Trucking Commissioner

Respondent

Before: The Honourable Justice Tammen

Oral Reasons for Judgment

In Chambers

(Hearing proceeded via videoconference)

Counsel for the Petitioner:	A.N. Mathur
Counsel for the Respondent:	T. Bant
Place and Date of Hearing:	New Westminster, B.C. June 15, 2023
Place and Date of Judgment:	New Westminster, B.C. June 16, 2023

[1] **THE COURT:** The petitioner's application for an interlocutory stay of a decision of the BC Container Trucking Commissioner (the “Commissioner”) to cancel a sponsorship agreement pending judicial review of that decision is dismissed.

[2] The final decision was made following various written communications between the parties on May 26, 2023. The petition was filed June 5, 2023, and is not yet set for hearing.

[3] The outcome of the petition will likely turn on whether or not the licence, or tag, that was cancelled was or was not a conditional tag.

[4] The result of the Commissioner's decision was that the petitioner's fleet of truck tags was reduced from 23 to 22. By happenstance, the Commissioner has since issued two additional conditional tags to the petitioner, increasing its complement to 24. There is also, again coincidentally, an open competitive tag application process underway which provides the petitioner, along with all other licensees working in the industry, an opportunity to acquire additional tags.

[5] Before addressing the legal test for an interlocutory stay, I wish to point out several overarching facts which arise from the chambers record and inform my overall consideration of the merits of this application:

a) The Commissioner is appointed by the Lieutenant Governor in Council and by legislation possesses broad oversight powers for the port transportation, or drayage, industry. In exercising those powers, the Commissioner must make a vast number of administrative decisions about widely disparate matters. In making those decisions, the Commissioner must consider the interests of all stakeholders within the industry, as well as the public interest in ensuring the efficient movement of goods through the ports of BC.

b) The petitioner operates in a highly-regulated industry, one in which its number of available tags is never guaranteed and always subject to some fluctuation.

[6] Against that backdrop, I turn to the three-part test for granting an interlocutory injunction.

[7] In my view, the petitioner clears the serious question to be tried bar, but only just. As I have noted, there is a discrete point to be argued, the precise nature of the tag which was cancelled, and I cannot say the petitioner's argument is doomed

to fail. The standard of review, however, will be deferential, and the petitioner faces an uphill battle on the merits.

[8] This case really turns on a consideration of irreparable harm and balance of convenience. What might constitute irreparable harm in a particular case is very much fact-specific. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.J. No. 17, the Court offered this guidance:

> [58] At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.
>
> [59] "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision [authorities cited] where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, *supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined . . .

[9] I am not persuaded that the petitioner has demonstrated any evidence of adverse economic consequences to its operations, much less irreparable harm. This case is not at all similar to the *Safeway Trucking Ltd. v. British Columbia Container Trucking Commissioner* (7 July 2022), New Westminster S244854 (B.C.S.C.) where the effect of the decision was to put the petitioner out of business. Here, as noted by the respondent, at most the Commissioner's decision resulted in a modest reduction of the petitioner's capacity to move goods and thereby earn income. There was evidence before me that the entire fleet of the petitioner is not working to full capacity. This is certainly not a case where there is evidence of permanent market loss or irrevocable damage to the petitioner's business reputation.

[10] As for balance of convenience, it weighs overwhelmingly in favour of the respondent. There is a strong public interest that decisions of regulators such as the Commissioner be enforced, unless and until they are set aside on judicial review.

[11] It is certainly appropriate that a party like the petitioner in this case have recourse to the courts to review important decisions of the regulator. However, if,

every time a review of any decision was taken, interlocutory stays were routinely granted, that would not be consistent with the overall purpose and intent of the legislative scheme. Nor would it permit the Commissioner to perform his core functions and duties in an efficient manner, if stays of his orders became commonplace on the filing of a petition seeking to review a decision.

[12] For those reasons, the application is dismissed. I make no order concerning costs.

"Tammen J."