

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *HAP Enterprises Ltd. v. The Office of the
British Columbia Container Trucking
Commissioner,*
2024 BCSC 2124

Date: 20241122
Docket: S252100
Registry: New Westminster

Between:

HAP Enterprises Ltd.

Petitioner

And

**The Office of the British Columbia Container Trucking Commissioner
(also known as the BC Container Trucking Commissioner)**

Respondent

Before: The Honourable Justice Elwood

Reasons for Judgment

Counsel for the Petitioner: A.N. Mathur

Counsel for the Respondent: D.G. Cowie
J.M. Patrick

Place and Date of Hearing: Port Coquitlam, B.C.
April 4, 2024

Written Submissions: September 25, 2024
October 11, 2024

Place and Date of Judgment: New Westminster, B.C.
November 22, 2024

Table of Contents

[I. INTRODUCTION](#)

[II. BACKGROUND](#)

[A. The Statutory Scheme](#)

[B. The Truck Tag Policy](#)

[C. Facts Giving Rise to the Petition](#)

[D. Petition for Judicial Review](#)

[E. Decisions by the Commissioner](#)

III. ANALYSIS

[A. Is There a Live Controversy?](#)

[B. Do the Circumstances Warrant an Exception?](#)

IV. CONCLUSION

I. INTRODUCTION

[1] These reasons for judgment address the doctrine of mootness, and whether the Court should decline to decide a judicial review that was advanced primarily on the basis of unreasonable delay, now that the decision that was allegedly delayed unreasonably has been made.

[2] The petitioner, HAP Enterprises Ltd. (“HAP”) is a trucking company.

[3] The respondent, The Office of the British Columbia Container Trucking Commissioner (the “Commissioner”) is appointed under the *Container Trucking Act*, S.B.C. 2014, c. 28 (the “Act”) with authority to issue container trucking licences and enforce compliance with the *Act*.

[4] The Commissioner initiated a series of investigations into certain trucking activities by HAP. While those investigations were on-going, the Commissioner refused to consider an application by HAP for additional “truck tags” to operate additional trucks.

[5] HAP brought a petition for judicial review, seeking orders in the nature of mandamus and declaratory relief compelling the Commissioner to conclude the investigations and make a decision on the truck tags. Following the hearing of the petition, while judgment was under reserve, the Commissioner issued a series of four decisions in HAP’s case.

[6] HAP acknowledges that the decisions by the Commissioner rendered the relief in the nature of mandamus moot. However, it continues to seek the

declaratory relief. If the declaratory relief was also rendered moot, HAP asks the Court to exercise its residual discretion to decide the issues in the petition.

II. BACKGROUND

A. The Statutory Scheme

[7] Container trucking services in the Lower Mainland are subject to the *Act* and the *Container Trucking Regulation*, B.C. Reg. 248/2014 (the "*Regulation*"). The scheme was enacted in 2014 as part of a collective response by the provincial and federal governments to address labour disputes in the container trucking industry.

[8] A central component of the Commissioner's mandate under the *Act* is managing the supply of trucks that access the Port of Vancouver, in a sector of the industry known as "drayage".

[9] Pursuant to s. 16 of the *Act* and s. 2(2) of the *Regulation*, no person may carry out prescribed container trucking services in the Lower Mainland unless the person holds a licence issued by the Commissioner.

[10] Section 26 allows any person to make a complaint to the Commissioner that a licensee or a trucker has contravened the *Act*.

[11] Section 31 grants the Commissioner the authority to conduct an audit or investigation, which they may initiate whether or not there has been a complaint. Section 32 grants the Commissioner authority to obtain documents and information relevant to the investigation.

[12] Section 34 authorises the Commissioner to impose a penalty should they be satisfied that a licensee failed to comply with the *Act* or the terms of a licence.

[13] If the Commissioner proposes to impose a penalty, s. 34(2) requires them to provide notice to the licensee, and provide the licensee with an opportunity to submit a response as to why the penalty should not be imposed. Upon receipt of any response, the Commissioner may impose the penalty or decline to impose some or all of the penalty.

B. The Truck Tag Policy

[14] The standard terms of a licence issued by the Commissioner require that a truck tag be assigned by the licensee to each truck providing services under the licence. The truck tag is attached to the truck, which must also be equipped with a GPS tracker to collect information about the truck's movements.

[15] Only tagged trucks may provide drayage container trucking services in the Lower Mainland.

[16] The Commissioner allocates truck tags according to the Truck Tag Management Policy. The purpose of this policy is to maintain a balance between the number of trucks and the availability of work in the sector.

[17] The Commissioner periodically reallocates truck tags through an application process that is open to all licensees. In general, an applicant must demonstrate that they are using their existing tags efficiently, and that they have a genuine need for additional tags.

[18] The Truck Tag Management Policy states that additional tags will not be allocated to a licensee who is undergoing an audit or investigation by the Commissioner.

C. Facts Giving Rise to the Petition

[19] HAP holds a container trucking licence under the *Act* that will expire on November 30, 2024. At the time it filed the petition, HAP had 26 truck tags.

[20] On April 18, 2023, the Commissioner advised HAP that the Commissioner was investigating a complaint that HAP had used an untagged truck to provide container trucking services in the Lower Mainland. HAP provided a response in which it stated, in essence, that the untagged truck was operated by a different company.

[21] On June 9, 2023, the Commissioner issued a bulletin to the industry inviting applications for additional truck tags. HAP applied for additional tags. It did not receive any additional tags, it was told, because it did not meet the onus of demonstrating a need for additional tags.

[22] On June 15, 2023, the Commissioner advised HAP that the Commissioner was investigating a second complaint involving HAP's use of an untagged truck. HAP responded, again in essence, that the untagged truck was operated by a different company. The Commissioner asked HAP to produce various documents, which it did.

[23] On November 17, 2023, the Commissioner issued a further bulletin to the industry inviting further applications for additional truck tags. HAP again applied for additional tags, providing additional information in support of a business case for additional tags.

[24] On January 3, 2024, the Commissioner advised HAP that the Commissioner was investigating a third complaint involving HAP's use of an untagged truck.

[25] On January 4, 2024, the Commissioner informed HAP that the Commissioner would not render a decision on HAP's November 2023 truck tag application until the Commissioner had completed his investigation into the complaints against HAP.

D. Petition for Judicial Review

[26] HAP filed a petition for judicial review on January 29, 2024. It sought the following relief:

- a) An order in the nature of mandamus directing the Commissioner to complete the pending investigations against HAP in a "time-bound manner";
- b) An order in the nature of mandamus directing the Commissioner to process and decide HAP's application for additional truck tags; and
- c) Declarations that the Commissioner had caused unreasonable delay in (i) concluding the investigations; and (ii) deciding the application for additional truck tags.

[27] The petition came on for hearing on April 4, 2024. In brief, HAP argued that the Commissioner owes a public duty to licensees to conclude investigations in a timely manner. This duty, HAP argued, arises from the Commissioner's regulatory

powers under the *Act*, and the policy rule that additional tags will not be allocated to a licensee so long as it is under investigation by the Commissioner.

[28] In addition, HAP argued that s. 34(1) of the *Act* creates a six-month limitation period once the Commissioner becomes aware of a failure to comply with the *Act* or a licence, within which the Commissioner must issue a decision to suspend or cancel a licence or impose an administrative fine.

[29] HAP argued that the Commissioner inappropriately “clubbed” the various complaints in this case into a single investigation, and unreasonably delayed the completion of the combined investigation. HAP argued that it provided all of the information the Commissioner required, but the Commissioner unreasonably failed to respond, and failed to provide any explanation for his delay.

[30] As a result, HAP argued, it had been denied the benefit of a decision on the merits of its application for additional truck tags and, as a result, faced a competitive disadvantage in a highly competitive trucking sector.

[31] The Commissioner argued that:

- the requirements for an order in the nature of mandamus were not met;
- there was no unreasonable delay on the part of the Commissioner; and
- a declaration on the terms sought by HAP would not be an appropriate use of declaratory relief.

E. Decisions by the Commissioner

[32] Just over a month after the hearing of the petition, the Commissioner issued the first in a series of decisions that brought the investigations into HAP to a close. The Commissioner provided HAP with an opportunity to file a written submission in response to the proposed determination. Ultimately, on June 28, 2024, the Commissioner found that HAP had breached the terms of its license in connection with certain container moves and imposed an administrative penalty of \$8,000.

[33] On July 4, 2024, the Commissioner issued a decision on HAP’s November 2023 truck tag application, awarding HAP two additional truck tags.

[34] On July 11, 2024, counsel for the Commissioner wrote to Supreme Court Scheduling enclosing the decisions by the Commissioner.

[35] By memorandum to counsel, I invited written submissions from the parties on mootness and the effect of the Commissioner's decisions on the relief sought in the petition.

III. ANALYSIS

[36] The approach to a question of mootness requires a two-step analysis. First, does the case involve a "live controversy" affecting the interests of the parties? If not, do the circumstances warrant an exception to the general rule that the court should not decide a moot issue? *Independent Contractors and Businesses Association v. British Columbia (Attorney General)*, 2020 BCCA 245 at paras. 7–8, citing *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 353.

A. Is There a Live Controversy?

[37] There is no "live controversy" in this case. The Commissioner has issued the decisions on the investigations and HAP's application for additional truck tags. There is no longer any legal dispute between HAP and the Commissioner as to whether the Commissioner is taking too long to complete his investigations or whether the delay in deciding the truck tag application is reasonable or not.

[38] A decision by the Court at this time on whether the Commissioner's decisions were unreasonably delayed will not have the effect of resolving any controversy which affects or may affect the rights of the parties. There is no evidence of any outstanding investigation that could impede HAP's ability to compete for additional truck tags or that could otherwise limit HAP's ability to carry out its business.

[39] I can appreciate that, from HAP's perspective, the Commissioner only rendered these decisions after HAP was put to the expense of seeking redress from the courts and while the parties were waiting for a judicial determination.

[40] However, the possibility that HAP may encounter further delay in some future investigation by the Commissioner is speculation and too remote to render

the declaratory relief that HAP currently seeks a live controversy. *Zucchiatti v. The College of Dental Surgeons of British Columbia*, 2013 BCSC 1736 at para. 15.

B. Do the Circumstances Warrant an Exception?

[41] The considerations that guide the exercise of discretion to decide a moot case are:

- a) whether there is an adversarial context;
- b) concern for judicial economy; and
- c) concern for the proper law-making function of the court.

Independent Contractors at para. 9, citing *Borowski* at 358-363.

[42] In this case, there is a robust adversarial context. The issues concerning delay and timelines under the *Act* were fully and ably argued by counsel for both parties at the hearing of the petition.

[43] However, the Court of Appeal has observed that the need for an adversarial context is somewhat like a filter in that it will be most influential when it is absent, and the Court does not have the benefit of submissions from counsel. Its presence, says nothing about the remaining two considerations which bear heavily on a court's decision to decide a moot case. *Independent Contractors* at para. 27.

[44] The second consideration is judicial economy. In this case, court time has already been used to argue the application. As the presiding judge, I also spent time considering the issues before Commissioner's counsel alerted the Court to the Commissioner's decisions. However, additional judicial resources would be required to prepare and issue reasons for judgment on the merits of the petition.

[45] In my view, the speculative nature of any further dispute between the parties militates in favour of conserving the further judicial resources that would be required to decide this moot case.

[46] The most compelling consideration in this case is the proper role of the courts. I have already noted the speculative nature of any further dispute over delay in the conduct of a future investigation by the Commissioner, which is itself

speculation. In the circumstances, a decision by the Court would not have any practical benefit to the parties. It would, in effect, be an advisory opinion on the Commissioner's duties under the *Act*.

[47] In *Independent Contractors* at paras. 35–37, the Court of Appeal endorsed judicial restraint in these circumstances and cautioned against offering legal opinions by way of declaratory relief, citing Chief Justice McEachern's approach in *Horton Bay Holdings Ltd. v. Wilks* (1991), 3 C.P.C. (3d) 112 at 120 (B.C.C.A.):

[35] ...

I think mischief could easily result from actions just for declarations. I would expect no declaration would be made unless the Court is satisfied that the declaration will have some practical value.

[48] HAP invites the Court to “finally set principles/guidelines for the container trucking/drayage sector in relation to similar complaints”. In my view, this would not be an appropriate role for the Court.

[49] The Legislature entrusted the administration of the *Act* to the Commissioner, not the courts. Section 6(1) of the *Act* authorizes the Commissioner to make rules respecting practice and procedure for all applications, audits, complaints, investigations, reconsiderations, submissions and hearings that come before the Commissioner. Acting on this authority, the Commissioner has published a comprehensive set of Rules of Practice and Procedure.

[50] Absent a live controversy between the parties and a proper factual record, it is not within the proper remit of a Supreme Court judge to set principles or guidelines for investigations within the Commissioner's jurisdiction.

IV. CONCLUSION

[51] The issues raised in the petition have been rendered moot. In accordance with the general rule, the Court declines to decide the merits of the petition.

[52] The petition is dismissed without costs.

“Elwood J.”