IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Uppal v. British Columbia (Container Trucking Commissioner),* 2025 BCSC 1819

Date: 20250917
Docket: S250340
Registry: Vancouver

Between:

Paul Uppal and Waldemar Zawislak

Petitioners

And

Office of the British Columbia Container Trucking Commissioner

Respondent

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Petitioners:	J.J.R. Schachter
Counsel for the Respondent:	M. Chan J.M. Patrick
Place and Date of Hearing:	Vancouver, B.C. August 25, 2025
Place and Date of Judgment:	Vancouver, B.C. September 17, 2025

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I. Introduction

[1] The petitioners seek judicial review of two decisions of British Columbia Container Trucking Commissioner regarding truck tags issued under the *Container Trucking Act*, S.B.C. 2014, c. 28 (the "*Act*") and the *Container Truck Regulation,* BC Reg 248/2014 (the "*Regulation*").

[2] For the past 20 years, each petitioner has owned two container trucks and hired full-time drivers to operate at least one and sometimes both trucks. Since 2014, they have done so under the regulatory and licencing scheme established under the *Act* and *Regulation*. That scheme regulates truck access to container terminals in Lower Mainland ports in part by conferring on the Commissioner broad discretionary authority to limit access through a licencing regime. Only trucks that are associated with a licenced company and that have been issued a truck tag under a licence may access a container terminal. The Commissioner limits the total number of licenses issued and the number of truck tags issued for each licence. The Commissioner also has broad discretion to impose conditions on licensees and the trucks that operate under them.

[3] The petitioners are independent operators contracted to a licensee. Since *Act* was introduced in 2014, they have each received two truck tags: one for each of their two trucks. However, in decisions dated November 20, 2024, the Commissioner advised that only one tag would be issued for each petitioner for the coming two-year licensing term which began on December 1, 2024. Moreover, the amount of time a hired driver could operate one of the petitioners' tagged trucks would be limited to not more than 90 days. In other words, as of December 1, 2024, each petitioner could only operate one truck, and each petitioner would be required to operate that truck himself most of the time. These restrictions were imposed based on changes the Commissioner made to the standard form licence conditions in May 2024 that apply throughout the industry.

[4] The petitioners argue the decision is patently unreasonable because it does not accord with language in the *Regulation,* it is not in support of a recognized

legislative purpose, it fails to consider the petitioner's unique circumstances, and it is contrary to an understanding that operators in the petitioners' circumstances would be grandfathered under the licencing scheme. They also argue the Commissioner failed to consider submissions made by one petitioner before making changes to the standard licence conditions in May 2024.

[5] For the reasons that follow, I find the Commissioner's decision is not patently unreasonable and the petitioners' submissions were heard and considered by the Commissioner in arriving at this decision. I would therefore dismiss the application for judicial review.

II. Background

A. The Statutory Scheme

[6] The container trucking industry, also known as the drayage industry, involves transporting shipping containers to and from port facilities and various other locations in the Lower Mainland. The statutory scheme was enacted following three major work stoppages which arose from driver dissatisfaction over how container truck operators were paid. This history and the related events that led to the adoption of the *Act* have been thoroughly summarized in the jurisprudence: *Aheer Transportation Ltd. v. Office of the British Columbia Container Trucking Commissioner*, 2018 BCCA 210 ["*Aheer* 2018"]; *Can. American Enterprises Ltd. v. The Office of the British Columbia Container Trucking Commissioner*, 2020 BCSC 2156 ["*Can. American*"]; *Port Transportation Association v. The Office of the British Columbia Container Trucking Commissioner*, 2022 BCSC 387 [*Port Transportation*] at paras. 12-14. In *Aheer Transportation Ltd. v. The British Columbia Container Trucking Commissioner*, 2022 BCSC 1779 [*Aheer* 2022], Justice Brongers gave this brief summary of those events:

> [7] Briefly put, there was a series of work stoppages that culminated in 2014 when Greater Vancouver area container truck drivers withdrew their services to manifest their dissatisfaction with trucking company payment practices. This costly strike was resolved through a "Joint Action Plan", the implementation of which was the subject of a report prepared by two experienced labour mediators, Vince Ready and Corinn Bell. That report recommended the establishment of a provincial agency to oversee the

> container trucking industry, including the setting and enforcement of driver payment rates. This recommendation was accepted by the provincial government. It then enacted the *Container Trucking Act,* SBC 2014, c. 28 ("*Act*") and the *Container Trucking Regulation,* BC Reg 48/2014 ("*Regulation*"), both of which came into force in December 2014.

[7] The purpose of the regulatory scheme was to stabilize the industry, in part by addressing what had been an excessive number of trucks providing drayage services to the ports and the underpayment of truckers by licensees: *Aheer* 2018, para. 60; *Can. American*, para. 10; *Aheer* 2022, para. 8. Essentially, the scheme confers on the Commissioner a discretion to limit the number of licensees and container trucks that may access the port and to set minimum rates of pay for container truck operators.

[8] Section 16(1) of the *Act* prohibits a person from carrying out prescribed container trucking services in the Lower Mainland unless the person is licensed to do so. Section 18 authorizes the Commissioner to impose any conditions in a licence the Commissioner considers necessary. In practice, and through the Commissioner's discretion under the *Act*, the licence is a standard form contract between the Commissioner and a trucking company that is used industry wide. Through an exercise of the Commissioner's discretion, only a limited number of licences are issued and those are typically for a two-year term. Licensees have no right of renewal for the licence and no guarantee they will receive another licence for the next licencing term: *Port Transportation* at paras. 107-110.

[9] The standard terms of a licence are determined by the Commissioner. Those terms require the licensee to assign a truck tag to each truck that performs regulated container trucking work for that licensee. There are two types of truck tags:

a) ***company tags***, which are assigned to trucks that are owned by the licensee and operated by its employees; and

b) ***independent operator tags***, which are assigned to trucks owned by independent contractors who have contracted to a licensee through a

> "sponsorship agreement" to provide container trucking services for that licensee. The standard terms of a sponsorship agreement are prescribed by the Commissioner.

This case concerns independent operator tags.

[10] As with licences, there is a limited number of truck tags issued to each licensee such that the overall number of container trucks that may access the port is limited.

[11] The *Regulation* contemplates three types of drivers:

a) ***Directly Employed Operators***, who are employees of the licensee and who operate container trucks owned by that licensee. A directly employed operator will operate a truck that holds a company tag.

b) ***Independent Operators ("IOs")***, who have an ownership or leasehold interest in a container truck and who are contracted to a licensee to perform container trucking services for that licensee. A truck owned by an independent operators may qualify to receive an independent operator tag if the independent operator has a sponsorship agreement with a licensee; and

c) ***Indirectly Employed Operators ("IEOs")***, who are employees of an independent operator and perform container trucking services for that independent operator by driving the independent operator's truck.

[12] Since truck tags are associated with a particular licence, they expire with the licence and neither the licensee nor an independent operator contracted to that licensee has a right to have the truck tag reissued for the next licensing cycle.

B. The Petitioners

[13] Both petitioners are independent operators who own their own trucks. Both have sponsorship agreements with a licensee. One petitioner, Paul Uppal, has a

sponsorship agreement with Jete's Lumber Co. Ltd. and the other petitioner, Waldemar Zawislak, has a sponsorship agreement with Maresk Logistics & Services Canada Inc. Both Jete's Lumber and Maresk are licensees under s. 16 of the *Act.*

[14] Before the current licencing term, the Commissioner issued and designated two independent operator tags to Jete's for Mr. Uppal's two trucks and two independent operator tags to Maresk for Mr. Zawislak's two trucks. This was effected by each petitioner having two sponsorship agreements with their respective sponsor, one for each truck. Each of Mr. Uppal and Mr. Zawislak employed one or two independently employed operators to drive their trucks. Both have paid these employees above rates prescribed by the Commissioner and neither petitioner has had compliance issues.

C. 2024 Licensing Reform

[15] On January 16, 2024, the Commissioner proposed changes to the standard form licence conditions to take effect in the next licencing term. These included amendments to the standard form sponsorship agreement that licensees must have with an independent operator to qualify for an independent operator tag.

[16] One proposed change was to limit on the number of IEOs that an IO could hire. Another was to specify that an IEO could only be a "relief driver" with a limit on the amount of time they could operate a IO's truck. A third change specified that an IO can have only one sponsorship agreement at a time. These proposed new conditions read as follows:

> The Sponsored I/O performs container trucking services a majority of the time while providing container trucking services for the Sponsor; [the **"Majority Driving Condition"**];
>
> The Sponsored I/O is entitled to hire one Indirectly Employed Operator ("IEO") as a relief driver under this Sponsorship Agreement [the **"IEO Relief Condition"**];
>
> The Sponsored I/O can only be a party to one sponsorship agreement at a time [the **"One Sponsorship Agreement Condition"**].
>
> [defined terms added]

[17] The effect of these provisions, if adopted, would restrict each petitioner to operating only one of their two trucks and each petitioner would have to operate the truck a majority of the time. The Commissioner described these and other proposed changes as having the following purpose:

> These changes reinforce the provisions of the Act and Regulations that require IEO's to be employees of the I/O – not the licensee. The intent of the IEO is to be a relief driver, not a permanent replacement.

[18] The Commissioner invited industry participants to make submissions on the proposed 2024 changes in a consultation process. Written submissions would be received until February 26, 2024, and consultation meetings with stakeholders would be held between March 11 and 28, 2024. A "final consultation report" would then be issued. That report would be "based on what was heard during the consultation."

[19] Mr. Uppal made written submissions pointing out that the proposed changes would prevent him from operating his two trucks as he had always done. His submissions reviewed some changes in the licencing terms since 2020 and stated he was being "phased out of the industry". He and a representative from his union also met with the Deputy Commissioner on April 10, 2024 to discuss the proposed changes.

[20] On May 2, 2024, the Commissioner released a consultation report announcing what changes would be made for the coming licencing term. The accepted changes included the three conditions set out above which were now worded somewhat differently but still had the same effect on the petitioners.

[21] In preparation for the new licencing term, and despite the new conditions set by the commissioner, Mr. Uppal entered into two separate sponsorship agreements with Jete's, as he had done in the past. Mr. Zawislak did the same with Maresk as he too had done in the past.

[22] By letters dated November 20, 2024 to each of Jete's Lumber and Maresk, the Deputy Commissioner advised that the Commission would process only one sponsorship agreement for each of the petitioners and issue only one truck tag for

each. The Deputy Commissioner advised that it is a violation of the new conditions 8 and 26 of the sponsorship agreement for a single independent operator to sign two separate sponsorship agreements.

[23] Condition 8 is a reworded version IEO Relief Condition. It reads:

> The Sponsored IO may not employ more than one IEO at a time to undertake Container Trucking Services or use the services of IEO to replace a Sponsored IO longer than the term specified by the Commissioner in the Tag Policy.

The Tag Policy, which has been in place since June 2020, effectively allows for an IEO to replace a sponsored IO for up to 90 days. Before the 2024 amendments, the predecessor to Condition 8 restricted a sponsored IO to hiring only one IEO at a time but it did not expressly restrict the amount of time the IEO could operate the truck.

[24] Condition 26 in the 2024 Sponsorship Agreement is the One Sponsorship Agreement Condition, unchanged from the wording proposed in January 2024. It is a new condition introduced to the standard form sponsorship agreement for the first time in 2024.

[25] On November 22, 2024, Mr. Uppal's union, Unifor, wrote the Commissioner on Mr. Uppal's behalf asserting that under Unifor's agreement with Jete's Lumber, "owner-operators with more than one truck in operation as of July 1, 2005, are grandfathered in". It asked the Commissioner to "respect the existing agreement" and allow Mr. Uppal to continue operating two trucks. In an email response dated November 26, 2024, the Deputy Commissioner declined this request stating that it would be "contrary to the purposes of the Container Trucking Act" to allow an IO to hold two tags.

[26] The petitioners now seek judicial review of the decisions as set out in the two November 20, 2024 letters. However, since those decisions were effectively pre-determined by the Commissioner's May 2024 decision to change the standard form licence and sponsorship agreement conditions, the judicial review is effectively a challenge to that decision.

III. Analysis

A. Is the Commissioner's Decision Patently Unreasonable?

1. Standard of Review

[27] There is no dispute that the Commissioner's decision is reviewable on a standard of patent unreasonableness pursuant to s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. Under s. 58(2)(a), that standard applies to findings of fact or law or an exercise of discretion. Section 58(3) provides that a discretionary decision will be patently unreasonable if it:

> (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.

[28] A patently unreasonable decision is one that is "openly, clearly, evidently unreasonable" or "so flawed that no amount of curial deference can justify letting it stand": *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52.

2. Are the Conditions Contrary to the Regulation?

[29] The petitioners argue that Condition 8, which limits IEOs to providing only time-limited relief work for IOs, effectively makes IEOs part time or temporary employees. They argue this conflicts how an IEO is defined in the *Regulation* and is therefore patently unreasonable. The definition reads as follows:

> **"indirectly employed operator"** means an individual, other than a directly employed operator, who performs container trucking services and is an employee, within the meaning of the *Employment Standards Act*, of an independent operator
>
> [Emphasis added]

[30] The petitioners argue that since an "employee" under the *Employment Standards Act* can be a full-time employee, Condition 8 contradicts the definition. They argue the Commissioner has essentially rewritten the definition of an IEO to limit them to part-time employees contrary to the *Employment Standards Act* definition which is referentially incorporated into the definition of IEO.

[31] It is within the Commissioner's discretion under the *Act* to limit the use of IEOs as prescribed by Condition 8, including by limiting the amount of time an IEO will be permitted to relieve an independent operator. Section 18 provides that in issuing a licence under s. 16(1), the Commissioner "may impose any conditions that the commissioner considers necessary" [my emphasis]. This is a very broad discretion which, as I discuss below, was conferred under the *Act* to enable the Commissioner to maintain stability in the industry. That said, even a very broad discretion cannot be exercised in a manner that is inconsistent with the *Act* or *Regulation*. Thus, if Condition 8 is inconsistent with the *Regulation*, as the petitioners suggest, it may be patently unreasonable.

[32] I am not persuaded that it is. I am unable to find an inconsistency between confining IEOs to part-time or temporary work (if that is the effect of Condition 8) and the definition of IEO in the *Regulation.* The phrase "within the meaning of the *Employment Standards Act"* as used in the definition of IEO does not prevent the Commissioner from imposing licence conditions that could, in practice, limit IEOs to part-time or temporary work. The crux of the *Employment Standards Act* definition of "employee" is not to categorize an employee as full-time, part-time, or temporary, but rather to define an employee largely by the characteristics of the relationship between the employee and the employer. It reads:

> **"employee"** includes
>
> (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
>
> (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
>
> (c) a person being trained by an employer for the employer's business,
>
> (d) a person on leave from an employer, and
>
> (e) a person who has a right of recall;

[33] The incorporation of "within the meaning of the *Employment Standards Act"* in the definition of IEO can reasonably be interpreted as serving to ensure that an IEO is truly an employee of the Independent Operator and not a subcontractor. Whether the IEO is full time, part-time, or temporary is not a factor in determining if the IEO

falls within the definition of "employee" in the *Employment Standards Act*. I am therefore not persuaded by this ground for judicial review.

3. Are the Conditions Contrary to the Legislative Purpose?

[34] Next the petitioners argue that the Commissioner's reason for limiting the use of IEOs is patently unreasonable. In her November 20, 2024 letters to Jete's Lumber and Maresk, the Deputy Commissioner provided this rationale for limiting the petitioners to one sponsorship agreement and one independent operator tag each:

> The purpose of these changes is to ensure the I/O was to be an operator of the vehicle who was to be provided with work. Since 2020, the [Office of the British Columbia Container Trucking Commission] has cancelled sponsorship agreements involving owners of vehicles who do not or no longer operate their vehicle.
>
> …
>
> The intent of the IEO is to be a relief driver, not a permanent replacement.

[35] The Deputy Commissioner further explained the decision in her November 26, 2024 response to Unifor's letter:

> These changes have been published since January 2024 and consulted on. Mr. Uppal attended a consultation meeting on March 28, 2024, and we again met with him on April 10, 2024 at the Union Hall. <u>We explained that changes were [*sic*] better capture the prohibitions that have been in place and always intended.</u> We encouraged Mr. Uppal to work with the licensee or apply for his own license if he wished to continue to be the owner of two trucks.
>
> The challenge is there are limited number [*sic*] of truck tags and to have one IO occupy two I/O tags and effectively turn one into a company tag using an IEO or defacto become a licensee would be contrary to the purposes of the Container Trucking Act.
>
> [Emphasis added]

[36] The Petitioners argue this explanation is patently unreasonable because it is circular. They suggest the Commissioner has adopted a new interpretation of the statutory scheme, identified a new objective of that scheme, imposed conditions to achieve that newly-identified objective, and justified the conditions by suggesting the objective has been part of the scheme since its inception. In other words, the explanation is that the new conditions were adopted because it was always meant to

be that way. The petitioners say this circular reasoning exhibits a "clear logistical fallac[y]" that is a hallmark of unreasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 104. They argue neither the Commissioner nor the Deputy Commissioner has identified anything in the statutory scheme that supports the newly-identified objective. They argue a reasonable decision requires the Commissioner to explain how this interpretation was arrived at. They say the well-established purpose of *Act* is to ensure truck drivers are properly compensated and this is achieved by setting minimum pay rates and limiting the number of container trucks that may access the port. They argue the restrictions on the petitioners' use of IEOs does nothing to undermine this purpose because they pay their IEOs more than the minimum rates set by the Commission.

[37] I agree that driver compensation was the specific concern when the *Act* and *Regulation* were adopted in 2014, but the objectives of the statutory scheme are more than just this. The broad discretion given to the Commissioner to regulate the industry through licence conditions indicates an intention to equip the Commissioner with the ability to ensure stability in the industry beyond dealing with just driver compensation.

[38] The scheme was comprehensively examined by the Court of Appeal in *Aheer* 2018. After a detailed review of the contextual history of the legislation, including the three work stoppages in 1995, 2005 and 2014, a "Joint Action Plan" that was reached through mediation to resolve the 2014 walkout, and the mediators' recommendations that led to the adoption of the *Act,* Justice Hunter, writing for the Court, said this about the purpose of the *Act* at para. 60:

> [The] 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."
>
> [Emphasis added]

[39] As Justice Coval observed in *Gulzar Transport Inc. v. Office of the BC Container Trucking Commissioner*, 2025 BCSC 514 at para. 82, the Commissioner is "tasked with regulating a highly competitive industry in which he must balance

numerous competing factors." He also noted the Commissioner has "specialized knowledge and experience" in the container trucking industry and this adds weight to the deference a court must give to the Commissioner's decisions.

[40] In my view, by establishing the position of Commissioner with an expectation the person serving in that role will have specialized knowledge and experience, and by giving the Commissioner broad discretionary power to regulate the industry, the legislature indicated its intention that the Commissioner would have a broad mandate to maintain stability in the industry, whether that be for driver compensation or other matters that might be disruptive.

[41] I find it is well within the scope of the Commissioner's discretion to find the manner in which IOs use IEOs can be a point of friction in the industry. The consultation report shows there were competing views amongst industry participants on how IEOs should be used. Some licensees thought IEOs should be eliminated altogether. Others favoured keeping IEOs as relief drivers but opposed the notion of IEOs permanently replacing IOs. These two positions contrast with those of the petitioners who favoured using IEOs as full-time operators for trucks owned by IOs or at least "grandfathering" those, like the petitioners, who had been operating on that basis for some years. These apparently divergent views are an illustration of the "numerous competing factors" that the Commissioner must balance to maintain stability in the industry: *Gulzar* at para. 82. I consider it to be within the Commissioner's statutory mandate to reconcile these competing views by coming up with a solution that the Commissioner considers will best foster stability.

[42] The Commissioner has provided a transparent and intelligible explanation of these tensions and of the decision as to how they are to be addressed. He stated in the consultation report:

> Some licensees felt that IEOs should be prohibited altogether because of previous experience with I/Os not paying their drivers and the liability ultimately being placed on the licensee. Drivers opposed such a ban on IEOs and were generally supportive of having an IEO as a relief driver and opposed to an IEO permanently replacing an I/O. The 2020 CTS license first limited I/Os to having one IEO and I do not feel a ban would be appropriate. I/Os are entitled to have a relief driver for times they are

> off work (currently up to 90 days) and some licensees insist that the I/O use a relief driver to ensure maximum efficiency of the truck tag.
>
> …
>
> There was general agreement that Independent Operators should continue to be owners and operators of their vehicles. Some Truckers were concerned about certain life events that may prevent them from operating their vehicle from time to time. The inclusion of IEOs as relief drivers should provide some ability for IOs who experience those periods of time, but the challenge is what is an appropriate period of time an I/O should be able to continue to use an IEO. Everyone agrees that it should not be for an indefinite period of time, but were unable to come to a consensus and the matter could be revisited when reviewing the Tag Policy.

[43] Keeping in mind that "written reasons given by an administrative body must not be assessed against a standard of perfection", I find this passage provides a transparent, intelligible, and justified rationale for limiting the use of IEOs and for the adoption of Conditions 8 and 26 as standard terms of the sponsorship agreement: *Vavilov*, paras. 91, 99-100. It identifies the point of tension among industry participants and provides a rationale for the decision that was made.

[44] In my view, whether it was always intended that the statutory scheme would limit IEOs to being relief drivers rather than permanent replacements for IOs, as the Deputy Commissioner stated in her November 26, 2024 letter to Unifor, is not material. It is within the Commissioner's area of expertise and experience to identify this as a tension in the industry, and it is evident the present Commissioner and Deputy Commissioner believe this has been a tension at least for some years. What is important is that the Commissioner views it as an area that might create instability in the industry and has addressed it through an exercise of discretion under s. 18 of the *Act*. It is well within the Commissioner's authority to do just that.

[45] Further, I am unable to agree with the petitioners that limiting IOs to only one tag and restricting their use of IEOs is an entirely new development in 2024. The Truck Tag Management Policy, adopted by the Commissioner in June 2020, provides that an IOs would be placed on "inactive" status if they took an extended leave from operating their trucks for more than 90 days. An "inactive" IO is disqualified from having a sponsorship agreement. According to the Deputy

Commissioner's November 26, 2024 response to Unifor, since 2020 the Commissioner had "cancelled sponsorship agreements involving owners of vehicles who do not or no longer operate their vehicle". Thus, the seeds of the Majority Driver Condition had been planted and apparently had begun to sprout more than four years before the present licensing term started.

[46] Additionally, as the Commissioner stated in the consultation report, the standard form licence adopted in 2020 "first limited I/Os to having one IEO". It appears the petitioners found a work-around for this limitation by entering into two separate sponsorship agreements with the same sponsor and there is no explanation for why the Commissioner permitted this before 2024, but it is evident the Commissioner has at least been moving the licencing framework in the present direction for some years. As Mr. Uppal himself noted in his February 22, 2024 submission to the Commissioner:

> The changes made to the CTS Licence over the last 5 to 6 years have unilaterally removed language that captured my specific situation. After 24 years of operating with the best of intentions, I am being phased out of the industry…
>
> [Emphasis added]

[47] Thus, as early as 2020 the Commissioner identified the use of IEOs an issue of concern to industry participants and began to address the issue at that time by placing limits on the number of IEOs an IO could engage. It seems the 2020 conditions were applied to the petitioners with some flexibility but as of 2024 the Commissioner has determined that stability requires a stricter approach. Again, it is within his discretion to make that determination and impose conditions to address it.

[48] I am not persuaded by this ground for judicial review.

4. The Unifor Letter of Understanding

[49] Next the petitioners argue there has been an understanding or expectation that the very small group of IOs who employ IEOs to operate two trucks would be "grandfathered" into the licencing regime such that the petitioners could continue to

operate as they have for 20 years. They point to a letter of understanding between Unifor and Jete's Lumber which they say confirms this understanding.

[50] I am not persuaded by this argument for at least three reasons. First, the Commissioner's office is not a party to the letter of understanding between Unifor and Jete's and I can see no basis on which the Commissioner could be bound by that understanding. The Deputy Commissioner reasonably pointed this out to Unifor in her November 26, 2024 letter.

[51] Second, the letter of understanding does not purport to preserve the ability of existing IOs with more than one truck to receive tags for each truck into the future. Rather, it sets out an understanding as to how the IEOs employed by IOs will be treated under the seniority provisions of the collective agreement between the Unifor and Jete's.

[52] Third, since there is no right or property interest in a licensee or a truck tag, a licensee or IO can have no legitimate expectation they will receive another licence or tag in the next licensing cycle: *Port Transportation*, paras. 105-108. Further, the legitimate expectations doctrine cannot give rise to substantive rights: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 para. 97. Thus, even if the petitioners expected to be grandfathered into the regulatory scheme, that expectation cannot result in an assurance of receiving more than one or any truck tags.

5. Did the Commissioner Fetter his Discretion?

[53] Next the petitioner argues the Commissioner fettered his discretion to consider the individual circumstances of the two petitioners by binding himself to the standard form language of the licence and sponsorship agreement that he adopted and prescribed for the industry in May 2024. However, absent bad faith or unfairness, the Commissioner is entitled as a matter of policy to identify and prescribe criteria for issuing licences: *Goodrich Transport Ltd. v. Vancouver Fraser Port Authority,* 2015 FC 520 ["*Goodrich*"] at para. 43; *Port Transportation*, paras. 123-128. As stated in *Goodrich*:

> [47] In the absence of statutory confinement, a decision-maker does not act unreasonably or fetter its discretion by developing and applying firm rules to the evaluation of license applications. So long as the rules it adopts are relevant to the exercise of its proper discretion, it is open to a decision-maker, acting fairly, to apply them strictly and without regard to other arguably relevant factors. In short, neither an interested party nor the Court can impose upon the decision-maker their own standards of relevance…

[54] As Crear J. said in *Port Transportation* at para. 125, "administrative agencies such as the Commissioner are entitled and, indeed, expected to adopt and follow policies to guide their operations."

[55] Here, the Commissioner adopted criteria for any licensee and independent operator to obtain an independent operator tag and, as a matter of policy, limited all independent operators to receiving one tag. That policy decision is not a fettering of the Commissioner's discretion.

6. Did the Commissioner Consider the Petitioners' Submissions?

[56] Finally, the petitioners argue the record indicates the Commissioner did not consider or grapple with the submissions Mr. Uppal made in the consultation process. They argue this is indicative an unfair process and a patently unreasonable decision.

[57] As discussed above, Mr. Uppal's February 22, 2024 written submissions raised his unique circumstance of being a 20-year participant in the container trucking industry as an IO with employees operating at least one and sometimes two of his trucks. His submission was, essentially, that IOs in his circumstances should be grandfathered into the regulatory scheme and permitted to continue this practice.

[58] These submissions were not addressed in the consultation report. In fact, some language in the report might suggest they were not considered at all. When discussing how long IEOs should be permitted to relieve the IOs who employ them, the Commissioner said this:

> The inclusion of IEOs as relief drivers should provide some ability for IOs who experience those periods of time, but the challenge is what is an appropriate period of time an I/O should be able to continue to use an

> IEO. **Everyone** agrees that it should not be for an indefinite period of time, but were unable to come to a consensus and the matter could be revisited when reviewing the Tag Policy.
>
> [Emphasis added]

[59] It is clear in Mr. Uppal's submission that he did not agree that I/Os should be prohibited from using IEOs indefinitely. Thus, the Commissioner was incorrect in saying "everyone" agreed. The petitioners argue the Commissioner's patently incorrect reference to "everyone" reveals that he did not consider Mr. Uppal's submissions.

[60] Further, the Executive Summary of the consultation report asserts that the changes proposed in January 2024 were "generally understood and supported by stakeholders" and where there were concerns and opposition to a proposal, those "have been highlighted in the report." Mr. Uppal's concern and opposition to certain proposals was not highlighted or even mentioned in the report. Again, it is argued this shows Mr. Uppal's submissions were not considered, let alone addressed.

[61] In my view, the petitioners' complaint primarily raises the issue of the adequacy of the Commissioner's reasons rather than a procedural right to be heard. There is no question the petitioners were given full opportunity to make submissions in writing and in person in the consultation process and Mr. Uppal took those opportunities. His written submissions are in the record, and I infer from the Deputy Commissioner's November 26, 2024 email to Unifor that he raised his specific concerns at the in-person meeting held on April 10, 2024. He was not deprived of the opportunity to be heard. The issue is whether he was listened to.

[62] The adequacy of reasons is most frequently addressed through an assessment of the reasonableness of the decision, but it can be relevant to procedural fairness: *Crest Group Holdings Ltd. v. British Columbia (Attorney General)*, 2014 BCSC 1651, at paras 36-38; *Cojocaru v. British Columbia Women's Hospital and Health Centre,* 2013 SCC 30 at para. 13. In *Cojocaru*, which concerned trial reasons given by a superior court judge, Chief Justice McLachlin wrote:

> … Reasons need not be extensive or cover every aspect of the judge's reasoning; in some cases, the basis of the reasons may be found in the record. The question is whether a reasonable person would conclude that the alleged deficiency, taking into account all relevant circumstances, is evidence that the decision-making process was fundamentally unfair, in the sense that the judge did not put her mind to the facts, the arguments and the issues, and decide them impartially and independently.

[63] A contextual assessment of the reasons is especially important in an administrative context where a decision maker's reasons must be assessed "in light of the history and context of the proceedings in which they were rendered" and "read with sensitivity to the institutional setting and in light of the record": *Vavilov* paras. 94 and 96.

[64] I am satisfied on the totality of the record that Mr. Uppal's submissions and representations made in the consultation process were heard and considered by the Commissioner. It is unfortunate that his specific concern was not squarely addressed in the consultation report and, read in isolation, the reference to "[e]veryone agrees" could lead Mr. Uppal to question whether he was listened to. However, this was a consultation process that involved many industry participants, and it is not surprising that some elements of the collection of submissions received would not be squarely addressed in the report. The Commissioner was not required to include all the arguments or other details a reviewing court might have preferred nor consider and comment upon every issue raised: *Vavilov,* para. 91; *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65 at para. 3.

[65] The fact that Mr. Uppal and his union representative had an individual meeting with the Deputy Commissioner, which she later described in her November 26, 2024 letter, satisfies me that Mr. Uppal's concerns were heard. The consultation report deals squarely with amendments to the standard-form licence and sponsorship agreement that provide added clarity to the One Sponsorship Agreement Condition and unambiguously limits IEOs to relief drivers with the IOs operating their trucks a majority of the time. The effect of these conditions on the limited class of IOs who had previously held two sponsorship agreements and employed IEOs as full-time drivers is unmistakable and the totality of the record

satisfies me the Commissioner turned his mind to those impacts. At the end of the day, however, the Commissioner determined stability in the industry favoured the changes he made, and the reasons for those changes are stated in the consultation report.

[66] I find that the petitioner's representations were heard and considered in a fair process and the Commissioner reached a discretionary decision that is squarely within his mandate, namely to maintain stability in the industry. The decision is transparent, intelligible, and justified on the totality of the record, including the consultation report.

IV. Conclusion

[67] For these reasons, I would dismiss the application for judicial review. The Commissioner did not seek its costs for this judicial review and thus I make no order as to costs.

"Kirchner J."