IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:	*KD Truckline Ltd. v. British Columbia Container Trucking Commissioner ,* 2026 BCSC 1258

Date: 20260709
Docket: S261452
Registry: Vancouver

Between:

KD Truckline Ltd., Trans BC Freightways (2007) Ltd., and Raja Road Rail Services Ltd.

Petitioners

And

British Columbia Container Trucking Commissioner

Respondent

Before: The Honourable Justice Jahani

Reasons for Judgment

Counsel for the Petitioners:	R.W. Parsons
Counsel for the Respondent:	M. Chan
Place and Date of Hearing:	Vancouver, B.C. May 8, 2026
Place and Date of Judgment:	Vancouver, B.C. July 9, 2026

[1] The petitioners, KD Truckline Ltd ("KD"), Trans BC Freightways (2007) Ltd. ("TBC") and Raja Road Rail Services Ltd ("RRR"), seek a mandatory interlocutory injunction against the respondent, the British Columbia Container Trucking Commissioner (the "Commissioner"), for the return of their respective truck tags effective January 1, 2026, until the determination of the petition filed in this action, which will be set for the judicial review of the Commissioner's decision.

[2] In the alternative, the petitioners seek an order prohibiting the Commissioner's office from re-issuing the tags to any other container trucking services ("CTS") licensees pending the final determination of this matter.

[3] The Commissioner opposes the granting of the injunction and of any alternative relief.

BRIEF BACKGROUND

[4] The petitioners are each incorporated under the laws of British Columbia and are holders of CTS licenses granted by the Commissioner. To obtain their 2024 CTS License, they each submitted an application to the Commissioner, including amongst other things, their respective business case supporting the truck tags requested, their historical truck tag and fleet utilization data, and historical employee wages per company truck tag.

[5] KD applied for 16 tags, TBC for three and RRR for 12. The Commissioner assessed each application and assigned 13 tags to KD, two tags to TBC and nine tags to RRR. The CTS licenses are valid until October 2026.

[6] At the end of May 2025, the Commissioner issued a general letter advising all licensees that he had conducted a truck tag performance review for the three-month period of December 2024 through February 2025. That letter also advised that if a licensee had demonstrated an overall underutilization of their truck tags compared to their respective peer group (either small, medium, or large fleet category), it would receive notification to improve its performance within 90 days or the licensee would

be provided with notice of the Commissioner's intention to reduce some of its allocated truck tags.

[7] The Petitioners received their letters on May 28, 2025, which assessed each of their performances as averaging less than that of their peers within their respective fleet category.

[8] Specifically, KD's performance was determined to have been at 49% of the medium fleet average of 1.32 trips per day during that period, RRR's at 69% of the

small fleet average of 1.16 trips per day, and TBC's at 75% of the small fleet average of 1.16 trips per day.

[9] The Commissioner's letter provided each petitioner with an opportunity to respond within ten days of the date of the letter, along with an opportunity to improve its tag performance during a 90-day period, in this case, the months of June, July and September 2025. It communicated that if the company's tag performance did not "significantly improve to, at or near the peer average within 90 days or demonstrate that each truck tag generates on average at or near full-time equivalent work at the minimum regulated rates", the company would be provided with reasonable notice of the Commissioner's intention to withdraw some of the tags assigned under its 2024 CTS License.

[10] The petitioners provided their respective responses to the Commissioner with respect to the December to February performance review. They described amongst others, their on-dock and off-dock activities, the nature of their businesses and fleet and tag utilization.

[11] The Commissioner assessed the petitioners' performance during the 90-day review period, taking into account their responses to the May 28, 2025 letter. The results were communicated to the petitioners on December 9, 2025. The Commissioner essentially concluded that the petitioners' performance had remained "significantly below their peer average", and that they had not shown "significant improvement" in their truck tag utilization during this second review. Accordingly, the Commissioner removed one tag from each TBC and RRR, and three tags from KD.

[12] It is the petitioners' position that the Commissioner did not provide them with an opportunity to respond to and make submissions in relation to findings of the 90-day review period, in the same manner one was provided through the May 28 letter. They further argue that the Commissioner used a different standard to assess their performances during this second review period than the one on which their licenses were originally granted.

THE STATUTORY SCHEME

[13] Container trucking services in the Lower Mainland are subject to the *Container Trucking Act*, S.B.C 2014, c.28 [*CTA*], under which, the Commissioner

has been appointed and authorized to oversee and issue container trucking licenses, enforce compliance with the *CTA*, and facilitate policy and regulatory review. Its purpose, is to ensure stability in the container trucking industry, also known as the drayage industry, by limiting and regulating the number of trucks that provide container trucking services.

[14] The licensing scheme was created in response to historical and chronic issues involving labour disputes arising from an oversupply of trucks and underpayment of drivers, leading to work stoppages that delayed the movement of goods, hence impacting businesses and ultimately the economy.

[15] Pursuant to s. 16 of the *CTA*, companies who access marine terminals in the Lower Mainland must obtain a license to provide container trucking services, and pursuant to s.18, the Commissioner is able to impose any conditions on a license that the Commissioner considers necessary.

[16] Trucks that provide container trucking services under the *CTA*, must be associated with and connected to a truck tag. Each tag is linked to a specific truck that must also be equipped with a GPS tracker for the purpose of monitoring the truck's activity and the licensee's fleet performance, as well as its overall compliance with the *CTA* during the term of the license.

[17] Truck tags are the mechanism through which the Commissioner controls the number of trucks operating in the sector, in an effort to ensure drivers have sufficient work. In fact, the purpose of the Office of the CTS License Truck Tag Management Policy (the "Tag Policy") is to "balance the number of trucks with the volume of container movements in the sector generally, and more specifically, encourage the movement of drivers to high performing companies". Sections 22 and 23 of the *CTA* prescribe the minimum rates that licensees must pay their drivers for wages and fuel surcharges.

[18] The Commissioner must set out the number of truck tags available when publishing an invitation for license applications and may not issue more tags than that number.

[19] When an applicant applies for a CTS license, they have to justify their requested number of truck tags through a business plan and other criteria set out in the Tag Policy.

[20] Pursuant to ss. 7(2)(b) and 9(2) of the Container Trucking Services Regulations [*CTR*] the Commissioner assigns a certain number of tags to each licensee. As set out in the terms of the license, the Commissioner reserves and retains the discretion to determine the number of truck tags granted under a license, and may increase or decrease their number over the term of the license: paras. 5 and 6 of the Tag Policy.

[21] Licensees may also apply to increase the number of truck tags authorized under their CTS licenses at the time of licensing and/or once during the term of the license.

[22] Currently, CTS licenses have a two-year term.

[23] The issuance, withdrawals and management of truck tags are governed by the Tag Policy, giving the Commissioner the ability to withdraw and reduce a licensee's tag(s), if they fail to maintain the performance metrics associated with the assigned tags under its license, and/or show a prolonged decrease in tag performance and container movement volumes. The licensee's performance is compared against their peers in the same fleet category as set out in the Tag policy.

<u>ANALYSIS</u>

[24] The test for a mandatory injunction, is set out in *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 [*CBC*], which modifies the first prong of the test for a prohibitive injunction articulated in *RJR-MacDonald Inc. v. Canada (Attorney General),* [1994] 1 SCR 311 [*RJR*]. For a mandatory injunction the applicant must establish:

1. That they have a strong *prima facie* case (instead of establishing the lower *RJR* threshold that there is a serious issue to be tried);

2. That the applicant will suffer irreparable harm absent the injunction; and

3. That the balance of convenience favors granting the injunction.

[25] The applicant bears the burden of establishing each element of the applicable test for either type of injunction.

1) A Strong *Prima Facie* Case

[26] A "strong *prima facie*" case has been defined as one where the applicant has established a "strong likelihood" on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice": *CBC* at para. 17.

[27] The petitioners' main arguments at the judicial review hearing will relate to procedural unfairness and patent unreasonableness of the Commissioner's decision.

[28] Therefore, at this injunction hearing and under this prong of the test, the petitioners must establish a strong likelihood that they will succeed in proving at the judicial review hearing, that the Commissioner's decision was procedurally unfair and/or patently unreasonable.

Procedural Fairness

[29] The petitioners submit that they have a strong *prima facie* case in establishing breach of procedural fairness because the Commissioner failed to seek submissions from the petitioners in relation to the 90-day review performance findings, prior to making its decision to withdraw the tags. They submit that had they been given the opportunity, they would have been able to show that their tag performance had improved following the May 28, 2025 letter. It is the petitioners' position that in doing so, the Commissioner breached the petitioners' common law and statutory right to be heard.

[30] At the future judicial review hearing, the standard of review by which procedural fairness will be assessed is that set out pursuant to section 58(2)(b) of the *Administrative Tribunal Act*, SBC 2004, c.45 [*ATA*], which states:

> 58 (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1) (b)questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

[31] For the purposes of this injunction hearing, to examine whether there is a strong likelihood of success at establishing procedural unfairness at the judicial review proper, a more detailed review of the record is required, especially since some of these details were raised at the injunction hearing in support of the petitioners' submissions.

[32] Section 19(1) of the *CTA* requires the Commissioner to provide the licensees with the opportunity to be heard before amending their licenses through tag reduction.

[33] The Tag Withdrawal Process section of the Tag Policy sets out the procedure under which the Commissioner reviews its tag allocation through performance reviews and the criteria it considers for tag reduction. Paragraph 17 of the Tag policy states as follows:

> 17. Should the Commissioner consider reducing the number of tags under a License, the Commissioner will provide the Licensee with a warning and a 90-day opportunity to improve tag performance, which is detailed on the Licensee's Balanced Scorecard. If, after 90 days, tag performance has not improved, the Licensee will be given reasonable notice of the Commissioner's intention to withdraw the tags.

[34] The Commissioner's May 28, 2025 letters, titled "Re: Tag Review - 90 days' notice", were sent in reference to this paragraph of the Tag Policy:

> In accordance with para. 17 of the Tag Policy, we are writing to provide [the Petitioner] with a 90-day opportunity to improve your tag performance. If [the Petitioner's] tag performance does not significantly improve to, at or near the peer average within 90 days or demonstrates that each truck tag generates on average at or near full-time equivalent work at the minimum regulated rates, [the Petitioner] will be provided with reasonable notice of our intention to withdraw some of its tags.

[35] The letters also asked each petitioner to provide a specific set of on-dock and off-dock information within ten days of the date of the letters, in the event they wished to provide a response or an explanation for their performance during the December 2024 to February 2025 review period.

[36] Through the May 28, 2025 letters, the Commissioner in essence, provided each petitioner with:

1. An opportunity to respond to its performance findings with respect to the December to February period; and

2. An opportunity to improve that performance during the 90-day period.

[37] Based on the Application Record, KD did not provide its response within the 10-day period set out in the May letter, but rather, on August 28, 2025, which is technically at the end of the 90-day period. Its response also failed to include the specific information requested by the Commissioner. Notwithstanding, the Commissioner still considered KD's response despite its lateness.

[38] Both TBC and RRR provided their responses within the 10-day period, but their material was considered incomplete, as some of their documentation was sent as summaries as opposed to actual reports. This resulted in the Commissioner granting them an extension beyond the original 10-day period to complete their submissions.

[39] The record reflects that despite these issues, the petitioners did respond and the Commissioner did consider their explanations and material in evaluating their respective performances. This is evident in the Commissioner's December 9, 2025 letter to each of the petitioners, wherein the Commissioner addressed the points they had each raised in their response material. The Commissioner also factored into its decision each petitioner's on-coming and prospective new client(s) (where applicable), and the potential number of annual container movements it could generate.

[40] The performance review period was from December 2024 to February 2025, and the 90-day period was the opportunity afforded to each petitioner to improve that performance in practice, beyond their explanations or documentary submissions as to why it had been below the requisite standard.

[41] There is nothing in the Tag Policy that would require the Commissioner to seek from a licensee further information or submissions after the 90-day review, in relation to their performance during those 90 days.

[42] During the proper judicial review hearing, the presiding justice may find procedural unfairness. However, at this injunction hearing, the petitioners have not presented any other material that could establish, for the purposes of a strong *prima facie* case, that the Commissioner failed to meet additional requirements to fulfil its obligation under section 19 of the *CTA*, or any other applicable law.

PATENT UNREASONABLENESS

[43] The Petitioners' second line of arguments relates to the patent unreasonableness of the Commissioner's decision, in that it exercised its discretion arbitrarily, and not in accordance with reason and principle.

[44] With respect to patent unreasonableness, subsections 58 (2)(a) and (3) of the *ATA* state as follows:

> 58 (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
>
> > (a)a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable
>
> …
>
> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
>
> > (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.

[45] The standard of patent unreasonableness is defined as one that is "openly, clearly, evidently unreasonable" and "almost borders on the absurd". It must be "so flawed that no amount of curial deference can justify letting it stand": *Gulzar Transport Inc. v. Officer of the BC Container Trucking Commissioner*, 2025 B.C.S.C. 514, at para. 90, citing *Shamji v. Workers' Compensation Appeal Tribunal*, 2018 B.C.C.A. 73 at paras. 37-39; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, para. 28.

[46] This standard grants utmost deference to the statutory decision-maker. At this injunction hearing, the petitioners must demonstrate a strong likelihood of success in proving at the judicial review hearing that the Commissioner's decision was patently unreasonable on the grounds they have raised as discussed below.

I) Changing Performance Standards

[47] The petitioners submit that in its performance assessment, the Commissioner changed the standard of the performance metrics set out under the license, which requires the licensee to “maintain” their performance during its term, to one that required the licensee to “significantly improve” their performance. The petitioners submit that this is patently unreasonable, especially in light of the fact that the petitioners had actually improved their performance from that based on which the original licenses were granted. I will address the specific issue relating to the improvement of performance metrics under “Other Issues” discussed further below.

[48] Some introductory background is warranted at this junction with respect to the Commissioner’s assessment criteria when a license and tags are being granted.

[49] Applicants seeking a license and allocation of truck tags “must demonstrate that they have the on-dock and off-dock container trucking services work to support full or near full utilization and full or near full-time equivalent work for each truck tag they request” (Application Record Tab 4, page 13). To that end, the Commissioner evaluates a prospective applicant/licensee’s historical tag utilization to determine whether a) the licensee’s trucks performed at or near industry average and b) whether the wages the licensee paid its drivers were at or near full-time equivalent wage at the regulated rate.

[50] Once tags are allocated, the licensee is required to continuously “maintain the performance metrics associated with all the tags assigned under its license as well as its performance requirement under the Vancouver Fraser Port Authority (“VFPA”) Access Agreement” (para. 13 of Tag Policy).

[51] It is clear based on the record that the Commissioner considers a number of other factors beyond the company’s VFPA scorecard data in its decision to allocate tags, such as the nature of the company’s business and their business case, their truck efficiency data and the number of containers moved, the wages paid, customer references and their history of regulatory compliance.

[52] To properly assess the petitioners’ arguments, it is also important to highlight some of the circumstances under which the petitioners’ tags were

originally granted under their license.

[53] At the time of their respective license applications in October 2024, KD who had 13 tags under its 2022 license, requested 16. TBC asked to keep the three tags it was allocated under the 2022 license, and RRR requested 12, having previously been allocated nine under its previous license.

[54] Based on the record presented at the injunction hearing, except for RRR whose historical data indicated that its performance was closest to "near or full utilization", the other two petitioners and in particular KD, had performed below the industry average at the time of their respective 2024 license applications (Application Record Tab 4, exhibit D (for KD) and Tab 5, exhibits A (for TBC) and B (for RRR). The Commissioner's findings in October 2024 suggest that none of the petitioners had sufficient work or the tag utilization metrics to justify the allocation of additional tags.

[55] Consequently, the Commissioner did not allocate the number of tags they had each requested. To KD, the Commissioner allocated 13 tags, to TBC, the Commissioner allocated two tags (reducing its tags from three), and to RRR it allocated nine, the same number of tags it had under its 2022 license. While RRR had the strongest overall metrics amongst the petitioners, the Commissioner's assessment suggests that RRR still had sufficient room under its nine tags to absorb the additional business it anticipated, to further maximize its tag utilization.

[56] Additionally, the record also appears to reflect that in relation to KD specifically, the Commissioner had made some assumptions and counted on the validation of those assumptions in allocating the 13 tags it ultimately granted to KD. To explain, KD's application material had presented conflicting metrics, in that its combined truck tag utilization placed it at 120% of the industry average, while its other metrics, such as its VFPA scorecard data, its wages generated per truck tag and its average monthly container moves, placed its performance at around one-half of the industry average.

[57] The Commissioner attempted to explain this discrepancy by assuming amongst others, that because of the nature of its business, KD may not have adjusted its payroll to pay the regulated rates for all its container truck services

work, resulting in KD submitting only payroll data related to “port-work”. It assumed that KD would, going forward, pay its drivers the regulated rate.

[58] The record therefore reflects that despite these assumptions, the expectation had always been for the licensees’ trucks to perform at or near the full-time industry average in their fleet category, and for their wages to be at the same level in their peer fleet group category during the term of the license.

[59] The May 28, 2025 and December 9, 2025 letters sent to each of the petitioners did not change that standard. The relevant sentences need to be read in their entirety. The May letters state:

> If the [petitioner’s] performance does not significantly improve to, at or near the peer average within 90 days or demonstrates that each truck tag generates on average at or near full-time equivalent work at the minimum regulated rate….”. The relevant sentences in the December letters similarly read:” The criteria for granting truck tags for the 2024 CTS license was generally based on the applicant’s ability to demonstrate that they have the on-dock and off-dock container trucking services work to support full or near full utilization and full or near full-time equivalent work for each truck tag requested” (emphasis added).

[60] It is only logical that the lower a licensee’s performance as compared to their peer average, the more significant the improvement will be to reach that average level. The use of the word significant does not raise the standard. KD had in fact not disputed in its response letter to the Commissioner that it was underutilizing its tagged trucks, but wanted the Commissioner to consider other operational realities unique to its business, and the fact that its tags did not jeopardize stable access to the marine terminals.

II) On-Dock and Off-Dock Trips

[61] The petitioners also submit that the Commissioner’s decision was largely based on each company’s number of on-dock trips, without taking into account their off-dock trips that had also been considered when the licenses and truck tags were originally granted.

[62] Section 2 of the Tag Policy requires the Commissioner to “review and determine the number of tags to be allocated to each applicant under an approved license, based upon information provided by the VFPA and a performance review

that identifies, in part, the number of <u>on and off-dock trips </u>per day conducted by each tagged truck" (emphasis added).

[63] The information the Commissioner uses to conduct the performance review is in part the licensee's monthly balanced VFPA scorecard data, along with any other information the Commissioner considers relevant, which may include information provided by the licensee with respect to their fleet performance: paras. 15 and 16 of the Tag Policy.

[64] The Commissioner compares a licensee's performance based on the size of its tagged fleet against their peers within the same fleet size grouping category.

[65] In the May 28, 2025 letters, the Commissioner highlighted that the 2024 CTS license process indicated an industry average of <u>one-to-one ratio</u> of on-dock moves <u>to off-dock moves</u>.

[66] Based on the record presented, in its performance review of the December 2024 to February 2025 period, the Commissioner did consider each petitioner's number of off-dock trips in assessing the degree to which they are higher than the one-to-one ratio of on-dock to off-dock moves, as compared to the average licensee.

III) Other Issues

[67] The petitioners have raised two other issues in the petition, both of which appear to be issues not expressly raised before the Commissioner in the petitioners' responses to the May 28 letters. The first is the petitioners' position that they had each generally maintained, if not improved their performance metrics from those based on which their respective licenses were granted. I note that with respect to this issue, the petitioners submit that their response letters did put at issue the performance metrics used by the Commissioner.

[68] The second is the allegation that in making its performance assessment, the Commissioner had in part relied upon VFPA scorecard data that proved to be incorrect, despite being made aware of such inaccuracies.

[69] It is the respondent's position that there is a general bar against raising new issues in a judicial review that were not before the adjudicator for consideration at

the time of their original decision. The respondent relies on paras. 22-26 of the decision of *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 [*Alta*] in support of their argument.

[70] The petitioners submit that the *Alta* decision does not strongly apply to the case at bar, because the new issue in *Alta* was raised for the first time during oral arguments, and was never raised in the court below nor in the petitioner's petition.

[71] The principles in *Alta* relate to new issues being raised on judicial review that were not before the adjudicator when it made its decision. The fact that in the present case the new issue was listed in the petition does not assist in this respect.

[72] That said, while there is a general bar against raising new issues on judicial review, the reviewing court does retain the discretion to consider them, even though it may be in unique or rare circumstances.

[73] For the purposes of the injunction application, and the petitioners' position that they had put the performance metrics at issue in their response letters, and that their metrics had improved, the record presented does not support the improvement reaching full or near full utilization and full or near full-time equivalent work for each truck tag within their fleet category, which is the standard the Commissioner requires the licensees to uphold and continuously maintain for each allocated tag pursuant to the terms of the license and the policy.

[74] With respect to the Commissioner relying on incorrect scorecard data, while each of the petitioner's affidavits make reference to such inaccuracies, the information contained therein is uncorroborated, and more importantly, there is no record that the Commissioner was made aware of such inaccuracies. For example, KD never raised this issue in its August 28, 2025 response to the Commissioner, and did not dispute the information contained on the VFPA scorecard data. The Commissioner's December 9, 2025 letter to KD makes no mention of having received information that the VFPA data was inaccurate.

[75] Similarly, while RRR and TBC refer at para. 35 of their affidavit material that the VFPA scorecard data did not accord with their internal system's record-keeping with respect to their container movements, the Commissioner's December 9 letter to each of those companies specifically states that the Commissioner was "not

provided with any information to suggest that the scorecard information during the review period is incorrect…".

[76] To the extent that this information may have become known to the petitioners post the deadline and extensions provided for their responses, the record also reflects that the Commissioner used the same criteria to assess all CTS licensees in the performance review process, and as such, it has not been shown that the VFPA data is the record that is inaccurate.

[77] Looking at the totality, while these issues will be determined on the petition proper, considering the material and submissions before me, I am not satisfied that a strong *prima facie* case has been made out.

2) Irreparable harm

[78] The petitioners submit that they each have and will continue to suffer irreparable harm if the Commissioner's decision is not stayed and their tags not returned. KD has indicated that its business has been strained to service its customers, resulting in the termination of three of its drivers. It has significant concerns about employee retention, the inevitable loss of business, loss of customers, harm to its reputation as well as other financial consequences such as potential detention and demurrage fee increases.

[79] TBC and RRR are equally concerned about their ability to meet their contractual obligations with their customers and retain them, particularly TBC, which only has one tagged truck. In the event of truck failure, TBC would be unable to use that truck to meet its obligations. They have each similarly terminated one employee as a result of the tag reduction.

[80] Two of the petitioners' employees have provided affidavits attesting to the impact of the tag withdrawal on their hours and finances.

[81] The second factor of the *RJR* test, which does not change under *CBC*, requires the applicant to demonstrate that they will suffer irreparable harm should injunctive relief not be granted. "It is the nature of the harm suffered [that is relevant] rather than its magnitude. It is harm that cannot be quantified in monetary terms, or which cannot be cured, usually because one party cannot collect damages from the other": *RJR* at page 341.

[82] Under the *RJR* test, there has to be a “sound evidentiary foundation” for the court to find irreparable harm and for the court “to conclude that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application”: *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 B.C.C.A. 395 at paras. 60 to 63.

[83] “Failure to render particularized financial evidence in support of an allegation of financial harm [has been found to be] usually fatal to an injunction application: *Can. American Enterprises Ltd. v. The office of the British Columbia Container Trucking Commissioner*, 2020 B.C.S.C. 2156 at para. 67, citing *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 F.C.A. 255, paras. 35-36, 49.

[84] Therefore, the types of loss envisioned must have traits of permanency and irrevocability, and, have to be supported through the evidentiary record beyond an affiant’s say so, and beyond speculation.

[85] I do not dispute the potential significant impact the reduction of truck tags could have on a licensee’s business and/or its drivers. However, while the petitioners may have terminated some of their truck driver employees as a result of tag reduction, the affidavit material demonstrates that this has not been a permanent downward change resulting in permanent harm; some of the petitioners have in fact increased their number of drivers. For example, KD previously had 17-18 drivers for the tagged trucks (Application Record, Tab 4 at para. 2) and as of December 31, 2025, it had 16 and as of February 25, 2026, it had 21 (Application Record, Tab 3, paras. 4-6).

[86] Similarly, TBC which previously employed six drivers to service its six trucks, had five as of December 2025 and three as of February 2026, and RRR who had nine employees to drive its nine trucks, maintained its nine drivers as of December 2025, and increased it to 12 as of February 2026. I do note that TBC and RRR are “sister companies that have operated in close coordination for decades” (Application Record Tab 5, p. 148) and are considered related persons pursuant to section 8 of the *CTR*. It could therefore be said that TBC and RRR collectively maintained 15 drivers between them as at the end of February 2026.

[87] The petitioners have not presented any financial documents that would support a decline in their business of a permanent and irreparable nature, resulting from customer loss and/or business loss, if the injunction is not granted as they await the hearing of the petition. While the petitioners submit that such a loss may be difficult to quantify, there must still be some financial evidence from before and after the loss of the tags to support an irreparable decline leading to irreparable harm. This is relevant and significant when one also considers that at the time of each CTS license application, the license applicants are not guaranteed the number of tags they were allocated during their previous license, and as such, it is expected that they may face some operational changes.

[88] Furthermore, in its December 2025 letter to the petitioners, the Commissioner confirmed that despite the tag withdrawals, the petitioners still have the opportunity to apply for additional tags pursuant to the Tag Policy.

[89] Based on the arguments presented at this injunction hearing with respect to this stage of the test, I am not satisfied that the petitioners have established irreparable harm.

3) Balance of Convenience

[90] The third factor of the *RJR* test requires the Court to assess which of the two sides to the dispute would suffer the greater harm from the granting or refusal of the injunction, pending a decision on the merits": *RJR* at para. 62. "This is a highly individualized enquiry informed by the unique circumstances of each case": *The Owners, Strata Plan NW 2575 v. Booth*, 2018 B.C.S.C. 715 at para. 48.

[91] The petitioners submit that the presumed impact on the public interest will be less in applications seeking an individualized exception to government action rather than a suspension of an entire law or scheme, and as such, they seek such an exception. They argue that the number of truck tags at issue is minimal as compared to the total number issued under the 2024 CTS licenses, and that the injunctions will have minimal impact on the broader public interest and no material impact on the local drayage industry. They submit that such injunction will not be precedent setting, nor would they create a flood gate of similar applications against the Commissioner.

[92] The petitioners' licenses were amended effective January 1, 2026, to reflect the reduced number of tags. The licenses will expire in October 2026. While the petition has been filed with the Court, as at the date of hearing this Notice of Application, a hearing date had yet to be set for the judicial review of the Commissioner's decision. That said, the petitioners do have the ability to apply for additional tags if their circumstances change.

[93] While the petitioners submit that the presumption of administrative independence does not prevent the courts from granting stays of administrative decisions pending judicial review, I note that in *Via Rail Canada Inc. v. Cairns*, 2003 FCA 319, the applicant had satisfied the first two prongs of the *RJR* test and "no evidence contrary and consent or no position [was] being taken by the respondents": at para. 9. This is not so in the case before the Court.

[94] The CTS licensing scheme was created to limit the number of trucks authorized to access port facilities, in an effort to resolve the previous oversupply of trucks that had led to pay inequality amongst the drivers, lower earnings, work shortages, work stoppages and effectively, the destabilization of the port industry.

[95] The licensing and Tag Policy were amended on multiple occasions over the course of the years, in consultation with the stakeholders in the drayage industry, inclusive of trucking companies, in an effort to maintain this balancing purpose. The factors the Commissioner takes into account in allocating truck tags were part of that consultation.

[96] The *CTA* and *CTR* provide a great degree of discretion to the Commissioner to carry out its mandated purpose. The Commissioner is able to determine the total number of truck tags available at the commencement of each license term, how many to allocate to each licensee applicant, how many to allocate during the term of the license period based on the ongoing needs of the industry, how to regulate truck efficiency, and in sum, how to carry out, regulate and enforce its statutory mandate.

[97] While the petitioners have suffered some loss as a result of the tag withdrawal, the Commissioner applied the same standard and criteria in its tag allocation and performance review process for all the CTS licensees. To create individualized exceptions for the petitioners by granting stays on the basis of

grounds they have argued, will be restricting the Commissioner's ability to fully carry out its mandate that was created through consultation with all the stakeholders, especially when the license has a two-year term, and the petitioners have the ability to apply for additional tags.

[98] The impact on the public interest mandate of the Commissioner will be much greater and "weighs heavily in the balance of convenience" (*A Lawyer v. the Law Society of British Columbia*, 2021 B.C.C.A. 284 at para. 93), considering the importance of the objective the Commissioner is mandated to achieve, and the public interest in ensuring the maintenance of stability in the steady flow of container trucking work in the drayage industry.

[99] To that end, I echo Justice Tammen's comments, that granting interlocutory stays routinely every time a Commissioner's decision is under review would be contrary to the overall purpose and intent of the legislative scheme and would prevent the Commissioner from efficiently carrying out its core functions: *GRL Freightways Ltd. v. The British Columbia Container Trucking Commissioner*, 2023 B.C.S.C. 1331 at para. 11).

[100] The Commissioner should have the ability to use the withdrawn tags to efficiently regulate its ports' operations.

[101] Looking at the totality, I conclude that the balance of convenience weighs in favour of the Commissioner in this case.

[102] Having concluded that the petitioners have not been successful in meeting the test set out in *RJR* and *CBC*, their applications for mandatory or prohibitive injunctions are hereby dismissed.

"Jahani J."