COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Simard Westlink Inc. v Office of the British Columbia Container Trucking Commissioner,* 2026 BCCA 442

Date: 20260923
Docket: CA51180

Between:

Simard Westlink Inc.

Appellant
(Petitioner)

And

Office of the British Columbia Container Trucking Commissioner and the Attorney General of British Columbia

Respondents
(Respondents)

Before: The Honourable Mr. Justice Willcock
The Honourable Madam Justice Fenlon
The Honourable Mr. Justice Riley

On appeal from: An order of the Supreme Court of British Columbia, dated November 4, 2025 (*Simard Westlink Inc. v Office of the British Columbia Container Trucking Commissioner*, 2025 BCSC 2178, Vancouver Docket S248413).

Oral Reasons for Judgment

Counsel for the Appellant:	D.S. Penner
Counsel for the Respondents:	N.J. Isaac M.G. Goodwin (via videoconference)
Place and Date of Hearing:	September 23, 2026 Vancouver, British Columbia September 21, 2026
Place and Date of Judgment:	Vancouver, British Columbia September 23, 2026

Summary:

The appellant appeals from a judicial review upholding a reconsideration decision by the Container Trucking Commissioner, which held that trucking containers moved between off-dock facilities by a licensee fell within the Container Trucking Act, SBC 2014, c 28, and required the licensee to pay its drivers the prescribed rates.

Held: Appeal dismissed. The Commissioner's interpretation of the Act was not patently unreasonable. The Commissioner considered and rejected the same arguments advanced on appeal. The appellant also cannot rely on an earlier decision by the Commissioner for the defence of officially induced error because the Commissioner had specifically cautioned the appellant that the prior decision was based on unique facts and cautioned the appellant (and the industry generally) against relying on it.

WILLCOCK J.A.:

Introduction

[1] The appellant performs "container trucking services" within the meaning of the *Container Trucking Act*, SBC 2014, c 28 [*Act*]. It must use truck tags issued by the British Columbia Container Trucking Commissioner and is required to pay minimum rates established by the *Container Trucking Regulation*, BC Reg 248/2014 [*Regulation*], to drivers when it does so.

[2] On March 15, 2023, two trucks belonging to the appellant moved ten containers in Port Coquitlam. The trucks did not have tags. The trips did not involve the movement of containers through a marine terminal and the goods carried did not go through a marine terminal at any stage.

[3] When those trips were investigated by the Commissioner, the appellant took the position that the containers did not fall within the definition of "container" as set out in the *Regulation* and they were not moved between "facilities" as defined. The Commissioner rejected those arguments in decisions leading to the Reconsideration Decision of February 22, 2024: Simard Westlink Inc. (CTC Decision No 04/2024) (Application for Reconsideration of CTC Decision No 09/2023).

[4] He held that because the appellant holds a license issued under the *Act*, it must (with very few exceptions) observe the regulatory requirements and pay the

prescribed minimum rates whenever it moves containers furnished or approved by an ocean carrier for the marine transportation of goods within the Lower Mainland, even where the service does not require access to a marine terminal.

[5] That decision was the subject of the judicial review that now comes before us on appeal. The appellant says the result of the Reconsideration Decision is a regulatory regime that only applies to licenced companies transporting such containers and not unlicensed companies doing the same job, creating a two-tiered rate structure, a result the appellant says is patently unreasonable.

The statutory scheme

[6] The term "container trucking services" is defined in the *Act* as "the transportation of a container by means of a truck".

[7] The *Act* provides:

> 16 (1) A person must not carry out prescribed container trucking services in a prescribed area unless
>
> (a) the person holds a licence issued to that person that gives the person permission to carry out container trucking services in the specified prescribed area, and
>
> (b) the person carries out the container trucking service in compliance with
>
> (i) this Act and the regulations,
>
> (ii) the licence, and
>
> (iii) if applicable, an order issued to the person under this Act.

[8] The *Regulation* made pursuant to the *Act* provides:

> 1 (1) In the Act and this regulation:
>
> "container" means a metal box furnished or approved by an ocean carrier for the marine transportation of goods;
>
> …
>
> (1.1) In this regulation:
>
> "facility" means a location in the Lower Mainland where containers are stored, loaded, unloaded, trans-loaded, repaired, cleaned, maintained or prepared for shipping, but does not include a marine terminal;
>
> …

"marine terminal" means one of the following:

(a) Centerm;

(b) Deltaport;

(c) Fraser Surrey Docks;

(d) Vanterm;

(e) any other container terminal for which a trucking authorization or port access agreement is required by the Vancouver Fraser Port Authority;

"off-dock trip" means one movement of one or more containers by a trucker from one facility in the Lower Mainland to a different facility in the Lower Mainland, but does not include

(a) an on-dock trip, or

(b) a movement of a container from one location in a facility to a different location in the same facility;

"on-dock trip" means one movement of one or more containers by a trucker from

(a) a marine terminal to a location in the Lower Mainland, or

(b) a location in the Lower Mainland to a marine terminal;

…

"trip", in relation to container trucking services, means an off-dock trip or an on-dock trip.

[9] Prescribed trucking services and the prescribed area are defined as follows:

2 (1) The container trucking services prescribed for the purposes of section 16(1) *[licence required]* of the Act are container trucking services that require access to a marine terminal, but do not include

(a) container trucking services performed by a trucker on behalf of a licensee, using a truck with a truck tag issued by the commissioner, or

(b) transportation of a container to or from a location outside the Lower Mainland.

(2) The area prescribed for the purposes of section 16(1) of the Act is the Lower Mainland.

The Decision Under Review

Domestic Repositioning

[10] The Commissioner rejected the appellant's argument that he lacked jurisdiction over the "domestic" repositioning of containers or for moves involving the

transportation of “domestic goods” based on some implicit concept of “domestic moves” or based on the appellant’s interpretation of “container” and “facility”.

[11] The Commissioner noted that the terms used by the appellant in its submissions, “domestic repositioning”, “domestic move” and “domestic goods” (as contrasted with “marine goods”) are not used in the *Act* or the *Regulation*. There was no support in the language of the *Act* or *Regulation* for the distinctions drawn by the appellant.

[12] Further, the Commissioner was of the view that the application of regulated off-dock rates to container movements within the Lower Mainland was meant to ensure that drivers are paid for off-dock container trucking services performed by licensees. The connection between off-dock movements and the stability of operations at marine terminals was addressed in the Ready/Bell Report, the report that led to the creation of the statutory regime.

Facility

[13] The Commissioner rejected the appellant’s argument that the containers were not moved between “facilities” as defined in the *Regulation*. The argument was that “facilities” are locations where containers are “stored, loaded, unloaded, transloaded, repaired, cleaned, maintained or prepared for shipping” (emphasis added); that the words “for shipping” in that definition qualify each of the preceding words; and that “shipping” must refer to the marine transportation of goods.

[14] The Commissioner considered that interpretation to be inconsistent with the language, context or purpose of the *Act*. He noted that the plain meaning of “shipping” includes “to cause to be transported” and held that a broad definition was more consistent with the beneficial purposes of the *Act*, “which clearly include compensating truckers while they are performing off-dock container trucking services.”

[15] The appellant’s definition would result in certain locations, such as rail yards, being simultaneously a “facility” and not a “facility” depending on the journey of each

container to or from the location. As licensees move thousands of containers throughout the Lower Mainland each day and those containers are stored, loaded, unloaded, transloaded or prepared for shipping in hundreds of locations, the appellant's interpretation would lead auditors to be "bogged down in an endless paper trail".

[16] It would also limit the application of the *Act* in a manner inconsistent with its purpose: ensuring stability in the Lower Mainland drayage industry as a whole.

[17] The Commissioner's conclusion was driven, in part, by the view that the explicit exclusion of "marine terminal" from the definition of "facility" supports the broader interpretation of "for shipping" as meaning "for transportation" in general. If a "facility" cannot include a "marine terminal", then, the Commissioner reasoned, a facility must include locations where a container can be dealt with for other than marine transport.

Container

[18] The Commissioner also rejected the submission that the containers did not meet the regulatory definition of "container" because they were not, in fact, used for the marine transportation of goods. The appellant claimed there was "no evidence or irrelevant evidence" supporting the Commissioner's findings that some or all of the containers were furnished or approved by an ocean carrier for marine transport. It says plates certifying the containers meet the criteria set out in the Convention on Safe Containers for marine transport ("CSC plates") are only evidence they are safe to transport on ships—not that they were furnished or approved for such use.

[19] The Commissioner held that the fact a container is not immediately or imminently on the ocean does not change the fact that the container is furnished or approved for marine transportation. Nor does the fact that its contents on any given trip are 'domestic goods'. As noted, that wording and concept does not appear in the *Act* or *Regulation*.

[20] The Commissioner considered a definition of “container” that would, by implication, exclude empty containers to be “directly contrary to empty containers being considered off-dock moves in the Ready/Bell Report” that led to the statutory scheme.

[21] The Commissioner was of the view that it would be nearly impossible to enforce a scheme in which the question whether a particular container is in or out of its scope would turn upon the criteria identified by the appellant.

[22] He held that all the containers the appellant moved on March 15, 2023, with the exception of the containers with expired CSC plates (and therefore containers no longer approved for the marine transportation of goods), were “containers” and therefore related to marine transportation.

[23] The appellant argued that the legislative scheme cannot have been meant to create a two-tiered rate structure because a simple corporate restructuring would allow it to avoid paying regulated rates for off-dock trips. The Commissioner rejected the proposition that the presence of a loophole in the legislation meant that the legislature did not intend to capture that which might be avoided by taking advantage of the loophole. In any event, the fact remained that the appellant was the licensee, and its vehicles were performing off-dock untagged work.

Officially Induced Error

[24] In the alternative, the appellant argued that if the trips in question fell within the scope of the regulatory scheme, the Commissioner was estopped from enforcing the *Regulation* retroactively. It says it conducted its business relying upon the Commissioner’s assurance that off-dock trips between non-marine terminals of the type in question in this case were not subject to regulation. If it was wrong, it contended, its error was officially induced.

[25] The assurance is said to be in the Commissioner’s decision in *Simard Westlink Inc.* (CTC Decision No 01/2020) [*Simard 2020*]. In that case, the Commissioner considered an audit of the appellant’s payments to drivers to ensure

compliance with minimum-rate regulations. In some cases, the appellant had been paying drivers a "domestic hourly rate" for trips, including, in particular, "movement of CN Rail and CP Rail 53-foot Retail Containers from the railways' intermodal terminals for 'domestic repositioning' of marine containers …". The appellant advised the auditor that it considered those trips to be "domestic" work, exempt from the regulated rate. The auditor advised the appellant it was not required to pay the Commissioner's rate when its company drivers were moving 53-foot retail containers from the railways' intermodal terminals for "domestic repositioning" (relying upon *Canadian National Transportations Ltd.* (CTC Decision No 02/2019, the "*CNTL*" decision).

[26] In *CNTL* the Commissioner had decided, *inter alia*:

> 13. …
>
> - The movement of retail containers was not to be considered container trucking services for the purpose of the audit as it represents the movement of containers which are not furnished or approved by an ocean carrier for the marine transportation of goods; [and]
> - The movement of empty overseas containers was not considered to be container trucking services for the purpose of the audit because it was determined that these moves were associated with a movement of a container by rail and therefore were not off-dock moves directly related to regulated on-dock moves;

[27] In *CNTL* itself the Commissioner had expressed the following caution:

> 29. … I must caution that this decision should only be viewed within the context of this audit and the unique factors and circumstances which were considered in reaching this decision….
>
> 30. I re-iterate that this is a unique case. The container trucking industry should not necessarily use these findings as a model or basis for any future collective agreement negotiations or pay structures, as my conclusions here are confined to the reasons noted above and to the specific facts in this case.

[28] Following *Simard 2020*, the Commissioner reiterated that the *CNTL* decision ought to be read with caution, in an April 17, 2020 bulletin to the industry which stated:

> **1. Licensees are required to pay off-dock rates for both trip and hourly paid drivers**
>
> It is a requirement that all licence holders pay the Commissioner's rates (set out in the Commissioner's Rate Order) for both trip-rate and hourly-rate paid drivers, and that licence holders also pay the PMR [Regulated Rates] on all off-dock moves for trip-rate paid drivers.
>
> **a. Trip Rates**
>
> Any move of a container that meets the definitions of "container" and "off-dock trip" in the *Container Trucking Regulation* (the *Regulation*) must be paid the required off-dock trip rate....
>
> …
>
> **c. Moves to and from CN and CP intermodal facilities are off-dock moves attracting off-dock rates**
>
> Licensees have cited Canadian National Transportations Ltd. (CTC Decision No. 02/2019) when arguing that they are not required to pay off-dock rates (trip, hourly or the PMR) for moves to and from CN or CP intermodal terminals. The CNTL decision should only be viewed within the context of that audit and the unique factors and circumstances which were considered for the purpose of that audit only and are not broadly relevant.

[29] On April 20, 2020, the Commissioner sent a letter to the appellant, advising of the aforementioned bulletin. The penultimate paragraph of that letter read as follows:

> Simard Westlink Inc. ("Simard") was recently audited by the OBCCTC. Simard's rate structure was deemed compliant for the purpose of its last audit and I do not intend to revisit the findings of that audit, nor require Simard to pay drivers retroactively. I am, however, writing to advise Simard of the OBCCTC's recent off-dock bulletin and remind Simard of its requirement to adjust its pay structure accordingly.

[30] Against that backdrop, the Reconsideration Decision addressed the argument that the appellant had been misled with respect to the regulator's position as follows:

> 81. … [A]ny alleged reliance on Simard's part should have reasonably been cleared up by the many advisories, bulletins and decisions advising licensees of the requirement to use tagged trucks when performing off dock-work, … In the April 17, 2020 bulletin—which I note was published after the Simard 2020 decision—the then-Commissioner warns licensees not to rely on [CNTL] because that decision has unique factors, and its findings were [for] the purposes of that audit only. The

> bulletin goes on to clarify that container moves to and from CN Rail and CP Rail intermodal facilities have always attracted off dock-rates (both prior to and after the CNTL decision).

[31] Despite rejecting the officially induced error argument, the Commissioner did not require the appellant to pay prescribed rates for moves of 53-foot containers for the following reasons:

> 84. Considering the above, [the history of decisions and directives with respect to 53-foot containers] I will not require Simard to pay Mr. Brar the regulated rate for movement of CPPU237220 or to review its payroll records related to 53-foot containers. However, going forward, Simard and industry as a whole should note that the dimensions of a container are not necessarily relevant to whether it qualifies as a "container" and the presence of four letter identification codes consistent with marine containers, the presence of a valid CSC plate, and the actual presence of these types of containers on an ocean carrier are generally sufficient to demonstrate that the container is "furnished or approved by an ocean carrier for the marine transport of goods."

Grounds of Appeal

[32] The parties do not question the applicability of the statutory standard of review set out in the *Administrative Tribunals Act*, SBC 2004, c 45: a finding of fact or law or an exercise of discretion by the Commissioner in respect of a matter over which he has exclusive jurisdiction must not be interfered with unless it is patently unreasonable.

[33] The appellant says the Commissioner erred in a manner that rendered the Reconsideration Decision patently unreasonable, by "failing to consider the absurdity of the logical and practical implications of his interpretation of the *Act* and *Regulation*", in particular:

a) in his consideration of whether the services in question were "prescribed container trucking services" under the *Act*;

b) in his interpretation of the marine terminal access requirement in s 2 of the *Regulation*;

c) in his consideration of the scheme of the *Act*, the object of the *Act*, and the intention of the legislature; and

d) in his interpretation of the word "container" in the *Regulation* in light of the above.

[34] In the alternative, the appellant says the Commissioner erred by "at once rejecting and accepting the appellant's defence of officially induced error", by exempting only 53-foot containers from his order.

Statutory Interpretation

[35] The appellant says "[r]espectfully, there is no rational interpretation of the *Act* or its purposes that supports the Commissioner's interpretation in a manner that is consistent with *Rizzo* [*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837, [1998] 1 SCR 27 (SCC)]. The Commissioner's interpretation is not consistent with the words of the *Act* (which must be read with the *Regulation*), the scheme of the *Act*, the object of the *Act*, or the intention of the legislature".

[36] The appellant submits that the Commissioner's decision fails to make sense of the legislature's intention, which was manifestly directed at regulating marine containers that travel to marine terminals, as reflected in *Hansard*. The Commissioner considered that argument and concluded that the legislation establishes a regime that excludes unlicensed truckers from marine terminals and imposes upon licensees who enjoy exclusive access to marine terminal work the obligation of compliance with regulations and rates whenever they move containers that have been furnished or approved by an ocean carrier for the marine transportation of goods.

[37] The Commissioner addressed the appellant's objection to a two-tiered rate structure for certain moves as follows, at para 24 of the CTC Decision No 09/2023 (adopted in the Reconsideration Decision):

> 24. Simard does not understand that the fact that it has a license to access a marine terminal in the Lower Mainland also requires it to pay the rates set out in the Rate Order even when it is not accessing a marine

> terminal. I find Simard's suggestion that the only CTS [container trucking services] work captured by the *Act* is work directly associated with the reason a company requires a license (i.e., to access a marine terminal) is inconsistent with the legislative scheme.

[38] The appellant says the Commissioner did not deal with evidence of legislative intent in *Hansard*. That alone does not make the decision patently unreasonable if it otherwise is defensible. In any event, as the respondent submits, the Commissioner was clearly cognizant of an intent to limit the legislation to work related to the ports or the drayage industry and interpreted the *Act* in a manner consistent with that intent.

[39] The appellant says the Commissioner's interpretation fails to grapple with the logical and practical implications of his interpretation of the *Act* and *Regulation*. It contends the Commissioner ignores that the two-tiered treatment of companies performing the exact same work will result in the undercutting of rates the statutory scheme was intended to avoid. The Commissioner was aware of and addressed that submission. The Commissioner reconciled that result with the legislative scheme in a rational manner.

[40] The appellant says the Commissioner's interpretation of the definition of a "container" leads to the absurd result that a container (and the movement of that container) that would otherwise be caught by the *Act* could be exempted from its application by the simple act of unscrewing its CSC plate. With respect, that is not how I read the Reconsideration Decision. The Commissioner identified indicia of approval for the marine transportation of goods other than the presence of CSC plates, including the presence of a four-letter identification code on a container that presumptively establishes that the container is so approved.

[41] He held that containers that were not approved for the marine transportation of goods (because their CSC plates had expired) were not caught by the definition. He did not address or approve of a practice of concealing certificates of approval or otherwise decertifying containers. The containers in issue in this case had valid CSC plates and the Commissioner cannot be said to have come to a patently

unreasonable conclusion in holding that they were approved for marine transportation.

[42] The appellant says the Commissioner's interpretation, as a practical matter, will result in truckers being uncertain whether they are in compliance with the *Act* until containers are picked up. At the same time, however, the appellant says the impugned moves ought not to have been regulated because the containers contained "domestic goods". Presumably that is as easy or as difficult to verify before moving containers as it is to verify whether the containers are approved for marine transportation (by, for example, checking for CSC plates or the four-letter identification code). In practical terms, the Commissioner's decision may require licenced truckers to have tags and pay prescribed rates on all container moves in the Lower Mainland. In my opinion, that cannot be said to be a patently unreasonable outcome.

[43] The appellant says a company's records show where a container originates and where it is delivered. The Commissioner can demand and audit those records and it is not difficult to determine whether a container passes through a marine terminal at some stage. It asserts that a company's records do not show whether a metal box is a "container" according to the Commissioner's interpretation, that companies do not record the presence of valid CSC plates. If that is the case, that is a matter for the Commissioner to weigh in determining how the *Act* should be interpreted. We cannot say he erred on the basis of speculation with respect to what can or cannot be easily verified in practice or on audits.

Officially Induced Error

[44] The appellant contends the Commissioner erred in rejecting the defence of officially induced error. It says the decision in *Simard 2020* and subsequent industry advisories led it to believe the moves in question were not subject to regulation. It says the Commissioner correctly identified the test that should be applied as that in *R v Jorgensen*, 1995 CanLII 85, [1995] 4 SCR 55 (SCC) [*Jorgensen*], but erred in the application of the test.

[45] I would not accede to that argument. In my view, it was open to the Commissioner to conclude there was no clear assurance given to the appellant that trips of the type in question in this case would be excluded from the regulatory regime. The most that can be said is that there was uncertainty in the industry with respect to the scope of the decision in *Simard 2020* and other decisions considering the applicability of the statutory regime to certain off-dock trips. The appellant was cautioned not to read too much into the *CNTL* decision almost immediately after *Simard 2020* was decided.

[46] In *Jorgensen*, Lamer C.J. (at para 19) cited with approval this passage from the judgment in *R v Cancoil Thermal Corp.*, 1986 CanLII 154, 27 CCC (3d) 295 (ONCA):

> The defence of "officially induced error" is available as a defence to an alleged violation of a regulatory statute where an accused has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. In order for the accused to successfully raise this defence, he must show that he relied on the erroneous legal opinion of the official and that his reliance was reasonable. The reasonableness will depend upon several factors including the efforts he made to ascertain the proper law, the complexity or obscurity of the law, the position of the official who gave the advice, and the clarity, definitiveness and reasonableness of the advice given.
>
> [Emphasis added.]

[47] In the case at bar, there was certainly no clear and definitive advice given to the appellant that would justify the application of the doctrine and afford a defence to the appellant.

[48] Nor would I accede to the argument that the Commissioner effectively recognized the officially induced error defence by declining to require the appellant to retroactively pay regulated rates for movement of 53-foot containers and therefore acted unreasonably in not recognizing the same defence in relation to all trips between non-marine facilities. As I read the Reconsideration Decision, the exclusion of those trips moving 53-foot trailers was an exercise of discretion, intended to reduce the impact of the order. It was clearly intended to reflect the fact that the appellant "may have been under a misapprehension" with respect to the applicability

of the regime to those containers (not that it had received erroneous advice), and that misapprehension should be taken into account, despite the fact it did not arise from clear or definitive advice.

Conclusion

[49] In my view, the respondent correctly describes the Commissioner's analysis as transparent, justified and intelligible. Judicial interference in this case is not warranted.

[50] I would dismiss the appeal.

[51] **FENLON J.A.**: I agree.

[52] **RILEY J.A.**: I agree.

[53] **WILLCOCK J.A.**: The appeal is dismissed.

"The Honourable Mr. Justice Willcock"