

Vehicles for hire – where are we now?

AMCTO 2019 Municipal Licensing and Law Enforcement
Forum

Stuart Huxley, Senior Legal Counsel, Ottawa

Stuart.Huxley@Ottawa.ca

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City of Ottawa VFH By-law

- By-Law 2016-272
- Enacted: August 31, 2016
- In Force: September 30, 2016

Regulates:

1. Taxicabs, Taxicab Drivers, Taxicab Plate Holders, Taxicab Brokers
2. Limousines
3. Private Transportation Companies

Case Law from Ottawa

- Abdullah v Naziri, 2016 ONSC 2168 (CanLII)
- Unifor, Local 1688 v. The City of Ottawa, 2018 ONSC 3377 (CanLII)
- Metro Taxi Ltd. v. City of (Ottawa), 2018 ONSC 509 (CanLII)

Abdullah v Naziri, 2016 ONSC 2168 (CanLII)

- Taxi drivers & their union sought an injunction against 13 Uber drivers.
- Injunction denied.

[67] I find that the balance of convenience does not favour granting an injunction for the above reasons: namely, the taxicab drivers are acting in their own financial interest in a private law case and not in the public interest; there are conflicting court decisions on whether the definition of taxicab in By-laws applies to Uber drivers; the City will be receiving an expert report analysing the impact of Uber and considering options for regulating Uber, which is highly relevant evidence that is not before me.

Unifor, Local 1688 v. The City of Ottawa, 2018 ONSC 3377 (CanLII)

- Decision of Superior Court – May 30, 2018
- Application pursuant to Sections 272 & 273 of MA, 2001
 - Seeking to quash VFH By-law
 - alternative that VFH By-law is illegal bonusing (s.106)

Restrictions on quashing by-law

272 A by-law passed in good faith under any *Act* shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law

Application to quash by-law

273 (1) Upon the application of any person, the Superior Court of Justice may quash a By-law of a municipality in whole or in part for illegality

Arrival of Uber in Ottawa

[38] The arrival of this new VFH business model was happening in other cities in North America with differing municipal responses. There were generally rapid exponential increases in the usage of the Uber business model thereby having a substantial impact on the traditionally regulated taxi system of VFH. There have since grown up companies other than Uber such as Lyft, Sidecar and Hailo.

Prosecutions:

[40] As described in his Affidavit ..., Manager of By-law and Regulatory Services for the City of Ottawa, the enforcement efforts against Uber drivers were “labour intensive, and expensive in terms of staff time and resources”. Between October 2014 and March 18, 2016, 174 charges were issued against unlicensed drivers believed to be working with Uber, resulting in 154 convictions. ...This represented a notable increase in the City’s enforcement of such infractions under the existing taxi regulation regime. Dialogue on the issue between the stakeholders and participants of the taxi industry, members of the public and municipal officials became vocal and appeared in the local media.

Consultant Review

Review Timeline

Phase 1 – Research Phase - early September to mid-October

KPMG and its partners on the Ottawa Taxi and Limousine Regulations and Service Review are developing six discussion papers that will facilitate informed consideration and input on the potential changes to taxi and limousine regulation and service that will give you useful information in preparing your comments and suggestions.

[Case Studies](#) (of other cities) & [Current Regulatory Regime](#) : released October 15, 2015

[Emerging Issues in the Taxi and Limousine Industry](#) & [Accessible Issues](#) : released October 22, 2015

[Customer Experience](#) & [Taxi Economics](#) : released October 29, 2015

posted here providing:

[Policy Options](#) : released November 18, 2015

Phase 2 – Consultation Phase – mid-September to early November

The consultation phase of the consultant's review ended on November 30, 2015

Phase 3 – Analysis and Reporting Phase – November and December

Analysis of the research and the input from the consultations on the Policy Options paper will inform the development of the consultant's final report.

[Consultant's Final Report](#) : released March 31, 2016

Phase 4 – Staff Analysis and Reporting – January to late March

The staff report to the Community and Protective Services Committee [agenda](#) (click on item 1).

Did the City fail to appropriately consider, research and consult on the economic impact of the new By-law? [No]

[137] In view of this, it is difficult to conclude that the City's research and consultation on the topic was inadequate. I found it to be extensive and comprehensive. It is within the discretion of the municipality to conclude that the KPMG review was reasonable or reasonable enough to permit the City to go forward with regime change in the VFH industry.

...

[147] One may conclude that the City did not do enough in addressing the issue of the new app-based VFH competition and the economic consequences to the taxi industry and that what the City did was overall unreasonable. Nonetheless, I am not persuaded that given the substantial deference owed to municipalities in carrying out its legislative affairs, the Applicants can succeed on this question.

Did the City fail to provide sufficient notice of the proposed By-law so as to permit the interested stake holders to respond and provide their point of view? [No]

[173] In my view, the Applicants were given ample time and opportunity to respond to the intended regulatory regime change and its ramifications. During the consultation phase of the KPMG review, wide public consultation took place. The Applicants had the opportunity to participate in the multiple platforms where this consultation took place, to be heard and to express their views.

...

[178] The Applicants were given procedural fairness and were heard. There is no reason to conclude that during all of these hearings and meetings accorded to the Applicants to present their position, that they were not heard and that their point of view was not considered.

Were there false expectations of a “level playing field” created by the City Councilors leading up to the enactment of the By-law?

[204] It is also important to keep in mind a principle that was not disputed by both counsel, that under the *MA 2001*, pursuant to section 5(1), the powers of a municipality are exercised “by its council”. In view of that, a municipal City Council, in carrying out its legislative functions under that *Act*, must be taken to speak with one voice which is “Council”, and which is that exercised during the Council’s vote on any particular by-law.

...

[206] With all of that in mind, I cannot find, on the evidence, that the Respondent ever made a promise to the Applicants that the regulatory change imposed on the new category of app-based PTCs and PTC drivers would be identical to that of taxis, a result that the Applicants would have considered a true “level playing field”.

Was the enactment of the By-law for a collateral purpose? [No]

[218] There is clearly a fundamental disagreement between the parties on this issue. In fact, there is now parallel litigation between some of the parties going on to determine, among other things, the very issue of who can be held liable for compensation for the diminution of taxi plate values. It is an issue beyond the scope of this Application even though some of the Applicants may be plate holders and will have to be decided by another court. (See Endorsement of Smith J. in *Abdullah v. Naziri* (Report [2016 ONSC 2168 \(CanLII\)](#)), Application Record, vol. V of V, tab 1.)

[219] The question before me is whether there is evidence to support the finding of such collateral purpose on the part of Council, when it enacted the By-law. After examining all of the evidence, I was not persuaded that the evidentiary record before me in this case supports the finding that the City enacted the By-law in question for the corollary purpose alleged by the Applicants. The fact alone that there exists a fundamental disagreement between the parties as to whether the City is responsible for compensating taxi plate holders for the diminution of their investment in the taxi plate and the fact that the matter is the subject of other litigations is insufficient, in my view, to come to that conclusion, on the balance of probabilities. On the evidence before me I cannot find any such improper motive as alleged by the Applicants.

Metro Taxi Ltd. v. City of (Ottawa), 2018 ONSC 509 (CanLII)

Decision on Class Action Certification: January 16, 2018 (Before Unifor case):

The Common Issues under the Class Proceeding:

- (1) Was the City negligent in enforcing the Taxi By-Law from September 1, 2014 to September 30, 2016?
- (2) Were the 2016 amendments to the City's Taxi By-law unlawful?
- (3) Did the City's conduct in allegedly negligently enforcing the Taxi By-law or in amending the Taxi By-Law in 2016 infringe on the right of the Taxi Plate Holders under s. 15 of the *Charter of Rights and Freedoms* or under [s. 3](#) of the [Human Rights Code](#)?
- (4) Did the fees collected by the City under its Taxi By-Law constitute an unlawful tax?
- (5) Are damages assessed in the aggregate an appropriate remedy?

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