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TO:	CHAIR AND MEMBERS, PUBLIC SAFETY COMMITTEE MEETING ON JULY 17, 2012
FROM:	JANICE L. PAGE SOLICITOR II
SUBJECT	LONDON TAXICAB OWNERS' AND DRIVERS' GROUP INC. APPLICATION TO THE ONTARIO SUPERIOR COURT OF JUSTICE - COURT FILE NO. 7123/12

RECOMMENDATION

That, on the recommendation of the Solicitor II, the Decision of Madam Justice Rady of the Ontario Superior Court of Justice, issued on June 29, 2012, in connection with the motion of London Taxicab Owners' and Drivers' Group Inc. for an interlocutory injunction to stay By-law L.-129-51, the Taxi and Limousine Licensing By-law, from coming into effect, **BE RECEIVED**.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- Report of the Director of Building Controls and Chief Building Official to the Environment and Transportation Committee at its meeting held on April 26, 2010
- Report of the Director of Building Controls and Chief Building Official to the Environment and Transportation Committee at its meeting held on June 7, 2010
- Report of the Director of Building Controls and Chief Building Official to the Community and Neighbourhoods Committee at its meeting held on June 12, 2011
- Report of the Director of Building Controls and Chief Building Official to the Community and Neighbourhoods Committee at its meeting held on July 19, 2011
- Report of the Director of Building Controls and Chief Building Official to the Community and Neighbourhoods Committee at its meeting held on October 18, 2011
- Report of the Director of Building Controls and Chief Building Official to the Community and Neighbourhoods Committee at its meeting held on November 29, 2011
- Report of the Director of Building Controls and Chief Building Official to the Community and Neighbourhoods Committee at its meeting held on January 24, 2012
- Confidential Report of the City Solicitor to the Public Safety Committee at its meeting held on June 19, 2012

BACKGROUND

On Friday, June 15, 2010, the Taxicab Owners' and Drivers' Group Inc. served an Application Record, seeking certain declarations and an order quashing By-law L.-129-51, the Taxi and Limousine Licensing By-law (the "By-law").

The Notice of Application sought an interim order staying the By-law from coming into effect on July 1, 2012 pending a full hearing of the issues. The motion was heard by Madam Justice Rady on Wednesday, June 27, 2012.

On June 29, 2012, Madam Justice Rady issued her decision, a copy of which is attached at Appendix "A" (the "Decision"), dismissing the motion for the interim relief on the basis that the applicant had not satisfied the second legal test for granting an injunction, that is whether or not the applicant would suffer irreparable harm if the motion was not granted. The Court found that if the applicant had suffered harm, "the damage is historical as opposed to prospective" (para. 19).

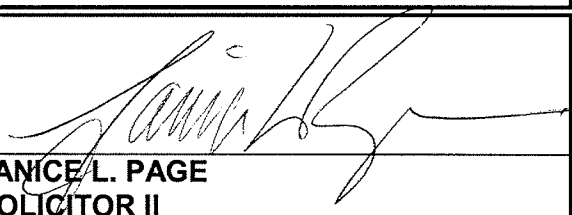
The Court found that there was a serious issue to be tried (the first legal test in an interlocutory injunction): in particular, whether the investigation into the 15% differential between taxi and

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limousine fares was adequate and how is section 2.1(e)¹ of the previous by-law, By-law L-126-256, to be interpreted as it relates to the establishment of new fares.

Having found that the applicant's motion failed on the second test, the Court made no decision regarding the third test, ie. the balance of convenience between the two parties.

As a result of the Decision, the By-law has come into force and effect. The application to quash the By-law has been scheduled to be heard on October 26, 2012.

PREPARED AND RECOMMENDED BY:

JANICE L. PAGE SOLICITOR II

Encl.

1 Section 2.1(e) of By-law L-126-256 (the previous taxicab and limousine licensing by-law) provided: "The Licence Manager shall review Schedules 'A' and 'B' at regular intervals and in any case not less than once every two years to determine that the Schedule 'B' Option 1 Fare for a Trip is at least 15% greater than the Schedule 'A' Fare for a Trip".

Jun. 29. 2012 2:25PM Judges Chambers

No. 0748 P. 2/6

CITATION: London Taxicab v. City of London 2012 ONSC 3874

COURT FILE NO.: 7123/12

DATE: 2012/06/29

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: LONDON TAXICAB OWNERS' AND DRIVERS' GROUP INC.
(Applicant)

- and -

CORPORATION OF THE CITY OF LONDON (Respondent)

BEFORE: JUSTICE H. A. RADY

COUNSEL: M. Paul Morrissey, for the Applicant

Janice Page, for the Respondent

HEARD: June 27, 2012

ENDORSEMENT

Introduction

[1] The applicant seeks to quash a City bylaw regulating the taxi and limousine industry in London on the basis that it is invalid for illegality or alternatively, it is unreasonable and discriminatory. The bylaw, which replaces an existing one, was passed on January 31, 2012. It comes into effect on January 1, 2012.

[2] The hearing of the application is scheduled to proceed in October of this year. Pending the hearing of the application on its merits, the applicant asks for a stay in the implementation of the bylaw pursuant to s. 272(4) of the *Municipal Act*. The parties are agreed that the test that is to be applied in deciding whether a stay should be granted is that set out in *R.J.R. – MacDonald v. Canada (Attorney General)*, [1994], 1 S.C.R. 311.

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[3] The applicant is the corporate form of the London Taxi Association. The applicant was recently incorporated in order to bring this application. The association is said to represent taxicab owners and operators in the City. It has 400 active members, its own offices, a bank account and a website.

[4] The association's primary concern is what it views as the City's discriminatory treatment in the regulation of taxicab drivers and owners as compared to limousine drivers and owners. It argues that the new bylaw does not maintain the current bylaw's provision requiring limousine rates to be 15% higher than taxi rates. The City takes a different perspective, which I touch on below.

The Law

[5] In order to succeed, the applicant must establish the following:

1. there is a serious issue to be tried;
2. the applicant will suffer irreparable harm if a stay is not granted; and
3. the balance of convenience favours the applicant.

[6] The City raises as a preliminary or threshold matter whether the applicant has standing to bring this application.

[7] The City points out that the applicant does not possess a licence and it will sustain no harm if the bylaw takes effect. As I indicated to counsel at the hearing, I prefer to leave the determination of that question for another day. I assume, without deciding, that the applicant has standing.

[8] The City also submits that no undertaking respecting damages is given. I assume that this was merely an oversight and would be rectified if I were inclined to order a stay.

Analysis

1. Serious Issue to be Tried:

[9] One can understand the applicant's concern respecting the increased competition from limousine services and its impact on the livelihood of the association members. The question, however, is whether there is a serious issue to be determined.

[10] The City asserts that there is no serious issue to be tried because:

- the standard of review by the court is broad, deferential and purposive;
- the City was acting within its powers in enacting the bylaw;
- there is no evidence of bad faith and it is not open to the court to quash on the basis of unreasonableness.

[11] The applicant submits that it has demonstrated an arguable case of bad faith, in the sense of an absence of good faith because the City failed to undertake an adequate investigation of fares to determine whether a 15% differential between services is maintained by the new bylaw. According to Mr. Hoare's analysis, it is not.

[12] The City argues that the existing bylaw only obliges it to review fares to determine whether limousine fares are at least 15% greater than taxi fares. This was done and it was open to Council, as a matter of policy, to approve the limousine fares in the new bylaw.

[13] I am persuaded that there is a serious issue to be tried. In coming to this conclusion, the words of Justice Belobaba in *Langille (c.o.b.) Rickshaw Runners of Toronto v. Toronto (City)*, [2007] O.J. No. 1756 (S.C.J.) seem relevant. He observed that "[w]here the economic interests of the business being regulated are at stake and there is a danger of being deprived of one's livelihood, the principles of fairness require that the business be provided with an opportunity to be heard and that the city council make

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'adequate investigations regarding the reasonableness of the conditions imposed by the bylaw'."

[14] To be clear, there is no criticism of the City respecting a hearing. The evidence before me suggests that there were extensive consultation and many hearings. It is the adequacy of its investigation, its interpretation of s. 2(1)(e) of the existing bylaw and the imposition of a new tariff that raise serious issues.

2. Irreparable Harm

[15] In my view, the evidence falls short of establishing that the applicant will suffer irreparable harm. As already noted, the applicant does not possess a driver's, owner's or broker's licence, although the directors of the corporation are holders of an owner's licence.

[16] Further, and as I believe the applicant recognizes, there are parts of the new bylaw that are favourable to the association's membership. Some provisions in the new bylaw do not change the existing bylaw. For example, there is no cap on limousine licences in either the current bylaw or the new one.

[17] The applicant suggests that perhaps Council might consider some sort of "grandfathering legislation" (the City's term) to permit the beneficial provisions to become effective. The difficulty is that any amendment to the existing bylaw would be subject to all procedural requirements. It is not clear to me that amendments could be achieved in an expeditious way, assuming the City were to agree with such an approach.

[18] Most significantly, the growth of the limousine industry in competition to the taxi industry has been a contentious issue for several years. Indeed, Mr. Kukurudziak's affidavit makes the case that the livelihood of taxicab drivers has been adversely affected because of an increase of 230% in the number of limousine owner licences in the last 12 years.

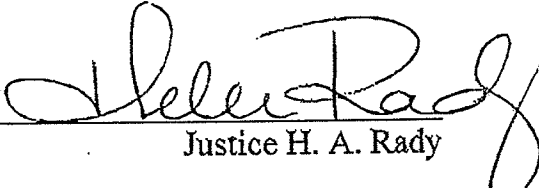
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[19] It seems to me that any harm sustained by the taxi industry has occurred largely in the past. Put another way, much of the damage is historical as opposed to prospective.

3. The Balance of Convenience

[20] Given my conclusion respecting irreparable harm, it is not necessary to deal with the balance of convenience.

[21] The motion is dismissed. Costs are reserved to the application judge. If for any reason the application does not proceed, counsel may speak to me respecting costs.


Justice H. A. Rady

DATE: June 29, 2012