

**CITATION:** London Taxicab Owners' et al v. Corporation of the City of London  
2013 ONSC 1460  
**COURT FILE NO.:** 7123/12  
**DATE:** 2013/03/08

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**APPLICATION UNDER *MUNICIPAL ACT*, 2001, S.O. 2001, c. 25, section 273**

**BETWEEN:**

LONDON TAXICAB OWNERS' AND  
DRIVERS' GROUP INC.

Applicant

- and -

CORPORATION OF THE CITY OF  
LONDON

Respondent

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) M. Paul Morrissey, for the Applicant  
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) Janice L. Page, for the Respondent  
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) HEARD: October 26, 2012  
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**RADY, J.**

**Introduction**

[1] This is an application to quash the taxi and limousine bylaw passed by the City on January 31, 2012.

[2] The applicant, which is said to represent the interests of those individuals who hold licences to operate and drive taxicabs, submits that the bylaw is illegal because it was passed in bad faith and because it discriminates without any rational basis. It

seeks an order quashing the bylaw in whole or in part. In particular, the applicant is concerned that the limousine industry has been permitted to compete directly with the taxicab industry and the most recent bylaw further erodes the distinction between the two services. The applicant submits that this has reached a point where the sustainability of the taxicab industry is negatively affected, which in turn has an impact on the approximately 1100 drivers that the industry employs as well as the value of taxicab licences.

[3] In response, the City submits that the bylaw was properly passed after the City received appropriate reports, and after the issues were debated following numerous public consultations and public participation meetings.

### **History**

[4] The City's first taxicab bylaw was passed on November 7, 1966 and came into effect on January 1, 1967. Prior to that, licensing of taxicabs had been regulated by bylaws passed by the City's Board of Commissioners of Police.

[5] The system of limits on the number of taxicab owner's licences was introduced by bylaw passed on October 16, 1972. It is common ground that there has never been a cap on the number of limousine licences.

[6] The predecessor to the bylaw that is the subject of this application was passed on November 15, 2004 and became effective on the same date. Prior to enacting the bylaw, the City obtained a report from BMA Consulting Inc., entitled the "Taxi Cab & Limousine Report". The purpose of the report was identified as a review of the "central issues" of the taxicab /limousine industry and to make certain recommendations. Those recommendations included:

- that City staff and Police Services develop guidelines/criteria for the issuance of licences with the goal of ensuring public safety and consumer protection;

- establishing vehicle age restrictions of seven model years for taxicabs and six model years for sedan limousines;
- A fare structure for executive limousines and in particular:

It is recommended that the Council endorse the zones and rates used by the largest Executive Limousine Service in London (Voyageur) and include this in the bylaw as the only acceptable zone rate structure. Voyageur has a sophisticated GPS system implemented that will assist in monitoring the appropriateness of the fares. The zones and fares should be reviewed on an annual basis to compare to taxi fees on similar routes for a sample of destinations to ensure that there continues to be an appropriate premium between Taxicab and Executive Limousine services. In addition, the City should continue to permit Executive Limousines to charge on an hourly basis. It is recommended that the minimum hourly rate for Executive Limousines be set at \$30/hour. Appendix D reflects the recommended zone rate structure.

[7] The BMA report did not recommend either a prohibition on hailing limousines or a restriction on the number of limousine licences. With respect to the former, it noted that "while there are some additional regulations that could be added to further differentiate the two services, as identified in the benchmarking section of the report, consideration must also be given to the fact that there is a well established limousine industry that has been operating for a number of years and stability of service should be maintained".

[8] With respect to the latter, the authors concluded as follows:

While the City does not currently restrict the number of limousines operating in the City, taxicab drivers strongly recommended that the City start limiting the number of limousine plates issued. This appears to be largely due to the fact that the taxicab drivers perceive that with the current market conditions, taxicabs and limousines are in direct competition.

This situation, however, should be rectified with improved definitions and fare schedules as highlighted earlier in the report. This is consistent with the approach taken in the majority of other mid to large size municipalities which do not limit limousine plates. In addition, by limiting the number of plates, there is the risk that, consistent with the taxicab industry a market value would be created for the plates which

does not benefit the quality of service provided to the public as funds would potentially flow out of the industry to purchase plates rather than improve the industry (emphasis mine).

[9] Pursuant to the old bylaw, the city clerk was required to review the schedules setting out the limousine and taxicab fares "at regular intervals and in any case not less than once every two years" to ensure that the limousine fare for a trip was "at least 15% greater" than the taxicab fare for the same trip (see Section 2.1 (e) of the old bylaw).

[10] The new bylaw was passed on January 31, 2012 and became effective on July 1, 2012. I will return to the process by which the bylaw came to be in some detail below. The new bylaw does not prohibit street hailing and it contains no restriction on limousine licences, thereby preserving the status quo as it existed in the earlier bylaw. It eliminates the required review to ensure a 15% rate differential but imposes higher limousine fares, which as I understand it, is intended to maintain a 15% differential.

### **Cabs and Limousines**

[11] The following information is derived from the affidavit of Jason Kukurudziak, who describes himself as a member of the applicant and the London Taxi Association and a cab driver since 1998. He deposes that it is not unusual for both cab and limousine services to operate in a municipality. Mr. Donnelly of the Aboutown Group of companies is quoted as describing taxicabs as "economical on-demand-for hire vehicles, providing the private sale of public transportation" while limousines are "an upscale form of private transportation meant to serve as a prearranged luxury service".

[12] The applicant submits that in London the distinction between the two services is blurred, which is an anomaly when compared to other Canadian cities. For example, limousines are not restricted to providing prearranged services but may accept street hails from pedestrians. They are permitted to wait in front of restaurants, entertainment venues and transportation stations for walk-up customers. Limousines are only distinguishable on the basis of the superior quality of vehicle used and the basis on which fares are calculated.

[13] In London, there are two types of licence for the operation of taxicabs and limousines. The owner of the vehicle must possess a taxicab licence and the driver a city-issued driver's licence. The number of licences is capped and an owners's licence may only be issued to someone who has been driving a cab for a specified period of time. In contrast, there is no restriction on the number of limousine licences or on who may acquire such a licence.

[14] Mr. Kukurudziak deposes that at present there are approximately 330 standard transferable taxicab owner licences and 1149 driver licences. The number of owner licences is limited to one licence for every 1100 residents in the city. Because the ratio was exceeded when the cap was introduced, no new owner licences were issued from 1996 to 2008. In 2008, nine additional licences were issued but none thereafter. To obtain a new owner licence, prospective owners pay the City an annual fee of \$25 to have their names placed on a priority list. Some prospective owners have been on the waiting list for a decade or two. Mr. Kukurudziak continues in his affidavit to describe the ability to transfer licences, subject to city regulation, which has created a valuable private market for taxicab licences. The acquisition of an owner licence is said to be a serious investment requiring significant capital.

[15] He says that most large municipalities restrict owner licences in order to ensure that the industry is sustainable; that drivers can earn a reasonable living; that standards are maintained; and owners' investments are protected.

[16] As already noted, there are no restrictions on the number of limousine licences issued and no minimum requirements respecting the number of hours of driving required in order to qualify for a licence. A licence may be obtained simply upon payment of \$520. There are a number of other differences in the treatment of taxicabs and limousines that I will not repeat here but are summarized at para. 20 of the applicant's factum.

[17] One major difference between the two services is the method of calculating fares. Taxicab fares are charged on the basis of a meter reading with the

meter calibrated to correspond to a formula prescribed by the City, based on trip duration and distance. Limousines, which are not metered, charge by the hour or on the basis of distance, with charges based on the number of "zones" through which the limousine travels during a trip. The zone rate structure is based on a map of the City divided, by grid lines, into a series of zones.

[18] The number of taxicab owner licences remains static but the number of limousine owner licences has risen from 40 in 2000 to 139 in October 2011. Mr. Kukurudziak deposes that limousines are performing the same service as taxicabs, which affects the viability of the taxicab industry and the ability of drivers to earn a living.

#### **The Passing of the New Bylaw**

[19] The City began the process leading to the new bylaw with an information report to the Environment and Transportation Committee on April 24, 2010. Mr. Katolyk, who is the manager of licensing and municipal law enforcement services with the City, deposes that the report set out the process for reviewing the old bylaw and for consultation meetings and workshops with the public and industry stakeholders.

[20] The consultation meetings were advertised and brokers were notified. Mr. Katolyk says that meetings were well attended and the issues debated fully. It is clear that the City was aware of the issues of concern to the taxicab industry.

[21] Council received ten public reports from Civic Administration and held several consultation meetings and workshops in 2010 and 2011. Interested parties could make written submissions and they had nine opportunities to address the City's standing committee before the bylaw was passed.

[22] The first draft of the proposed bylaw was considered by the Community and Neighbourhoods' Committee on July 19, 2011. The draft contemplated a prohibition on hailing limousines. Following that meeting, City Council passed the following resolution on July 25, 2011:

*That the following actions be taken with respect to the Taxi/Limousine by-law review and proposed by-law:*

- (a) an information report, dated July 19, 2011, from the Director of Building Controls and Chief Building Official, with respect to the Taxi/Limousine By-law review and proposed by-law BE RECEIVED;*
- (b) a PUBLIC PARTICIPATION MEETING be scheduled IN November 2011;*
- (c) the Civic Administration BE ASKED to report back at the October meeting of the community and Neighbourhoods committee with respect to the following;*
  - (i) the appropriate number of Municipal Law Enforcement Officers required to effectively and efficiently undertake inspections and investigations with all costs to be covered by licence fees;*
  - (ii) appropriate maximum mileage for which a taxi should be kept in service; and*
  - (iii) options to allow customers to hail limousines as a public choice for a vehicle for hire.*
- (d) that the Director of Building Controls and Chief Building Official report back at the August meeting of the Community and Neighbourhoods Committee on the by-law requirements of the age of vehicles and the timing of the public participation meeting in November.*

[23] At its meeting held on September 27, 2011, the Community and Neighbourhoods Committee received a communication from the London Taxi Association, with an alternative draft proposed bylaw. City Council resolved at its meeting held on October 3, 2011 to refer the proposed draft to Civic Administration for its consideration in the review of the City draft.

[24] Although the proposed July draft bylaw contemplated a prohibition of hailing executive limousines, at its meeting held on October 22, 2011, Council passed the following resolution on Councillor Hubert's motion:

*That the following actions be taken with respect to the Taxi/Limousine By-Law review:*

*(a) the Public Participation Meeting relating to the proposed Taxi/Limousine By-law scheduled for November 29, 2011, BE HELD at Centennial Hall; and,*

*(b) the information Report, dated October 18, 2011, from the Director of Building Controls and Chief Building Official, and the communication, dated October 18, 2011, from J.R. Donnelly, Vice-President and Chief Operation Officer, Aboutown, with respect to the proposed changes to the Taxi/Limousine By-law, BE RECEIVED and part 3.1(w) of Schedule B of the proposed by-law BE REMOVED and the practice of hailing be continued, as it has in the past; it being noted that this issue is outside the scope of December 2010 direction of Council; it being further noted that the above-noted information report is in response to the direction of the Municipal Council for additional information.*

[25] The City concedes that there was no December 2010 direction of Council.

[26] The applicant is suspicious of Councillor Hubert's motivation for introducing such a motion and intimated that he may have been influenced by the limousine industry.

[27] Mr. Kukurudziak complains that the new bylaw eliminated reference to the 15% differential but that taxicab drivers had been assured by Mr. Katolyk that the distinction would remain in the form of a new tariff and that there would be a prohibition against limousine hails. He says that Councillor Hubert's motion to eliminate any prohibition was unexpected and of course did not accord with Mr. Katolyk's recommendation in his report of July 19, 2011. On November 21, 2011, a motion was introduced to revisit council's earlier no hail decision. The motion failed because the required two-thirds majority was not achieved.

[28] A revised draft bylaw was put forward by Civic Administration at the public participation meeting held by the Community and Neighbourhoods committee on November 29, 2011. At its meeting held on December 6, 2011, Council resolved that:



- (a) *the report dated November 29, 2011, from the Director of Building Controls, Chief Building Official and Licence Manager, which includes a proposed draft by-law, BE RECEIVED for information;*
- (b) *the Civic Administration BE REQUESTED to report back in January 2012 with any proposed changes to the draft by-law reference in (a) above, in response to comments received at the November 29, 2011 public participation meeting; and,*
- (c) *the Civic Administration BE REQUESTED to report back to the Public Safety Committee (PSC) with respect to lifting the limitations imposed on the number of Accessible Cab Owner Licences issued.*

[29] The November meeting was apparently well attended and the committee received delegations and written communications. Mr. Katolyk deposes that the hailing issue was hotly debated and as a result, he prepared a revised no hailing provision in the draft bylaw for consideration at the January 24, 2012 meeting.

[30] A further public review occurred on January 24, 2012 and delegations were received from Yellow London Taxi Inc., Checker Limousine and Aboutown. City Council also received written submissions from Checker and Aboutown prior to the new bylaw being passed. Checker opposed any increase in the limousine tariff. Aboutown advocated the prohibition of street hailing of limousines and an increase in their fares. City staff, according to Mr. Kukurudziak, continued to recommend a no hail provision.

[31] The bylaw, as further revised, was debated by City Council on January 30, 2012. At this session, council voted against a prohibition on street hailing limousines in a 7 to 5 vote with one recusal and two absent votes.

[32] The rationale seems to have been that enforcement of such a prohibition would be difficult. Mr. Kukurudziak suggests that the City never studied the enforceability of such a provision and as a result, the City acted improperly and in bad faith. On the other hand, Mr. Katolyk says that he considers enforcement issues when a bylaw is being drafted. He agreed with Councillors Hubert and Orser that enforcement might be difficult. It is noteworthy that Mr. Katolyk is an experienced

member of City Administration, having worked with the City in various capacities since 1987. Presumably, he would know if a proposed provision would be difficult to police.

[33] There is a divergence in the evidence respecting whether the 15% differential provided in the old bylaw was being observed. In Mr. Katolyk's affidavit, he deposes that he and his staff undertook an analysis of the 15% differential in limousine and taxicab tariffs. His analysis and report is set out as follows in his affidavit:

#### **Calculation of Current Executive Limousine Tariff**

19. As part of the review of the calculation of taxicab fares and executive limousine fares for the new By-law, I undertook the process recommended by the BMA Report. My staff and I consulted with the taxicab and limousine industry on how the differential in fares should be undertaken. These consultations included discussions with drivers, owners and brokers. Discussions about the process of determining which sample rides to determine the taxi fares that would be used in the analysis also occurred at various public consultation sessions.

20. Following these discussions, a list of destinations was prepared by my staff and me. The destinations included short, medium and long trips within the City. Several of the trips included geographic barriers such as the Thames River as this was repeatedly mentioned by the industry as an issue in fare differentials. Limousine brokers provided the fares for the proposed destinations that would be used in the analysis. I made an offer to the Taxi Association that it could "ride along" when the municipal law enforcement officer did the rides in the City vehicle equipped with a taxi meter calibrated to the City standard to determine the taxi fares. The Taxi Association did not take me up on my offer. The trips were taken in March 2011.

21. Based on the trips taken and my analysis of the data, I recommended in my report to the Community and Neighbourhoods Committee on July 19, 2011 that:

*In order to strike a balance between recognizing the historic public demand for executive limousines and the sensitivity of the industry with respect for fare comparisons, the following bylaw regulations are recommended: a prohibition of limousines parking in taxi stands and a prohibition of street hails; a zone fare map limousine fares to be calculated as travelled zones by most expeditious route; limousine fares to increase for zone 4 and higher by \$0.75 per zone.*

*These regulations will clearly distinguish the differences between taxi and limousine services provided. The current regulation stipulating a specified difference in rates which compare limousine fares and taxi fares will not be included in the draft bylaw.*

22. I reported to the Community and Neighbourhoods Committee on July 19, 2011 that it is difficult to consistently measure the limousine/taxicab fare differential due to issues such as seasonality, weather, time of day, topography, rail lines to replicate all taxi trips with a taxi meter.

23. After public consultation and in view of the comments received from the industry, I further analyzed the data collected and I prepared a spreadsheet in order to compare the fares. Based on the fares provided by limousine brokers and the taxicab fares as determined by the taxicab meter installed in the City enforcement vehicle, I concluded that on average the difference in limousine fares were [sic] over 15% higher than taxicab fares, 78% were less than eight zone trips. Also, I compared the total cost of all rides taken, in an effort to determine if a limousine zone fare rate increase would be required. In order to approximate a 15% fare differential, it was my conclusion that a rate of increase of \$1.50 would be required to be added to each zone. I recommended phasing in the increase over two years.

24. I reported my analysis to the Community and Neighbourhoods Committee at the public meeting held on November 29, 2011. I advised the committee that it was impossible to attain the 15% differential on every single trip. I advised the committee that the new Bylaw would contain provisions to recognize zones travelled and the most expeditious route be taken.

25. My report to the Public Safety Committee on January 24, 2012... outlined the key issues discussed at the public meeting held on November 29, 2011. In this report, I concluded that for the purposes of differentiating fares the 15% differential would be used as a guide and that the limousine fares would need to be increased by \$1.50 per zone and that this increase be phased in over two years.

[34] Mr. Katolyk appends to his affidavit the spreadsheet that he prepared. It is entitled "Taxi v. Checker Limo rates" and it compares the applicable taxi fare to the limousine fare for a number of trips. The rate difference is expressed as a percentage. In some cases, the limousine rate is higher than the taxi. In others, it is lower but Mr. Katolyk calculated that as an average, the limousine rates charged were 15.92% higher.

[35] In contrast, Mr. Kukurudziak says that in fact, City staff discovered that the 15% differential was not being maintained and in fact, at times the fare charged was less than that of a taxicab. He deposes in his affidavit as follows:

29. However, in studies performed in or about 2011, involving random trips being taken by city staff between identical locations in taxicabs and limousines, it was found that the required 15% differentiation was not being maintained and that, in fact, in many cases, the limousines were charging not only less than the 15% premium, but amounts which were less than the taxicab fares.

While the overall results of the study showed limousine rates which were cumulatively between 6% and 7% higher than taxi rates, for a number of individual trips the limousine charge was less than the taxi charge. As city staff noted in its report, of the 40 trips taken, in 15 of the cases, the conveyance service was cheaper in a limousine than a taxi" and that, while with shorter trips, limousine fares were higher, "in some cases, as the number of zones travelled increase to four and over, some limousine fares were cheaper than taxi fares."

30. The problem is exacerbated by the fact that the existing bylaw does not clarify how the zone charges are to be assessed. It is unclear as to whether a limousine must pass completely through two zones to become a "two zone" trip, whether the zone calculation is based on the route taken by the limousine or can be calculated by drawing a straight line from the starting point to the destination. Given the city staff observation that cab rates are likely to be higher when natural obstacles or "geographical boundaries" lie between the starting point and destination (such as the river, creeks or ravines), it is apparent that the latter "straight line" method is being employed by some limousine drivers. It is also unclear as to whether the drivers can use diagonal lines to connect and calculate zones, such that a trip which travels through 7 zones may be legally calculated and charged as a 4 zone trip, and a 9 zone trip can be charged as a 5 zone trip without violating the bylaw, by simply drawing a diagonal line through the zones at points where their corners meet.

[36] Mr. Kukurudziak also appends a spread sheet, which is similar to that in Mr. Katolyk's affidavit, although it does not appear to be sorted by zone and there is no expression of the fare differential as a percentage or of the average differential.

[37] The applicant says that the new bylaw does not ensure that the 15% differential is met. In fact, it says that the schedule ensures that the differential will not be achieved. It hired James Hoare of Hoare Dalton to review the City's cost differential analysis. He has concluded that approximately half of the charges for limousine trips reflected in the City analysis did not exceed taxicab fares for the same trip. Mr. Hoare points out that the City's methodology is flawed because of an overrepresentation of trips between one and seven zones and an underrepresentation of trips involving eight to thirteen zones. In response, the City disputes Mr. Hoare's findings and questions his methodology.

[38] In any event, the preamble to the new bylaw identifies the underlying policy for the bylaw as necessary and desirable "for the purposes of health and safety, consumer protection and service quality", "provided in a manner that provides a safe environment for both passengers and drivers". As already noted certain provisions (the cap on taxicab licences and none on limousines, no prohibition of street hailing of limousines, etc.) mirror the provisions in the old bylaw. A new limousine tariff was introduced as well as a number of provisions that the applicant acknowledges are beneficial to the taxicab industry.

## The Parties' Positions

[39] The applicant submits that the bylaw was passed in bad faith in the sense that Council acted unreasonably and arbitrarily, and without adequate investigation, with the result being unjustifiable discrimination against taxicab owners and drivers.

[40] The respondent submits that the applicant has no standing; that the City has the authority to differentiate between taxicabs and limousines; and that the bylaw was passed in good faith, following consultation and debate, and in the public interest.

## The Law

[41] I do not propose to deal with the law respecting standing because I am going to assume, without deciding, that the applicant has standing. While the issue was canvassed in the City's material and factum, it was not strenuously pressed during argument.

### 1. The Standard of Review

[42] Questions respecting jurisdiction are reviewed on a correctness standard. However, the courts are told to take a broad and deferential approach to municipal decision making. The Supreme Court of Canada expressed it in this way in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485:

The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced.... This interpretive approach has evolved concomitantly with the modern method of drafting municipal legislation. Several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters... *Municipal Act, 2001*, S.O. 2001, c. 25.... This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes...

## 2. Power to pass licensing bylaw

[43] Section 151 of the *Municipal Act, 2001* provides that "a municipality may provide for a system of licences with respect to a business". Section 156 of the *Act* specifically authorizes municipalities to pass licensing bylaws with respect to the owners and drivers of taxicabs and may:

- (a) establish the rates or fares to be charged for the conveyance of property or passengers either wholly within the municipality or from any point in the municipality to any point outside the municipality;
- (b) provide for the collection of the rates or fares charged for the conveyance; and
- (c) limit the number of taxicabs or any class of them.

[44] Section 8 of the *Act* provides that a municipality's powers "shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipality issues". Subsection 4 of the same section provides that "a bylaw under this *Act* may be general or specific in its application and may differentiate in any way and on any basis a municipality considers appropriate".

[45] In *Toronto Taxi Alliance Inc. v. Toronto (City)* (2005), 77 O.R. (3d) 721 (C.A.), the Court of Appeal said that a "reviewing court should not second-guess the municipality as to whether the bylaw will be more or less effective in achieving the intended purpose or purposes" and that a taxicab bylaw that differentiates "between individuals and corporations and interferes to some extent with the contractual and financial decision making of licence holders does not render the bylaw invalid".

## 3. Bad Faith

[46] Section 272 of the *Act* provides that "[a] bylaw 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 reasonableness or supposed unreasonableness of the bylaw."

[47] The applicant bears the onus to prove bad faith. As the Divisional Court observed in *Re: H. G. Winton Ltd. v. North York (Borough)* (1978), 20 O.R. (2d) 737 (Div. Ct.):

The standard to be met in establishing bad faith is high and necessitates evidence to demonstrate the City acted other than in the public interest. Bad faith by a municipality connotes a lack of candor, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to service private purposes at the expense of the public interest.

[48] Moreover, "courts should be slow to find bad faith in the conduct of democratically elected representatives acting under legislative authority, unless there is no other rational conclusion": *London Property Management Assoc. v. London (City)* (2011), 90 M.P.L.R. (4<sup>th</sup>) 30 (Ont. S.C.J.)

[49] Bad faith can be established on the following bases:

- Unreasonableness: *Payne v. Windsor (City)*, 2011 ONSC 5123 (S.C.J.);
- Arbitrary or unfair conduct: *Equity Waste management of Canada Ltd. v. Halton Hills (Town)* (1997), 35 O.R. (3d) 321 (C.A.);
- Discriminatory application: *Payne v. Windsor (City)*, (*supra*);
- The absence of some justifiable rationale for a discriminatory bylaw: *Xentel DM Inc. v. Windsor (City)*, (2004), 50 M.P.L.R. (3d) 165 (S.C.J.);
- A failure to engage in consultation and analysis: *Airport Taxicab (Pearson Airport) Association v. Toronto (City)*, [2008] O.J. No. 490 (S.C.J.);
- The imposition of a measure on the basis of random choice and without supporting evidence: *Langille (c.o.b.) Rickshaw Runners of Toronto v. Toronto (City)*, [2007] O.J. No. 1756 (S.C.J.);
- A fare ceiling based on random choice, or arbitrarily taken out of the air: *Langille (c.o.b.) Rickshaw Runners of Toronto*, (*supra*);

- Where conditions are being imposed which affect economic interests and livelihoods in the absence of adequate investigation regarding the reasonableness of those conditions: *Edwards v. Faraday (Township)*, [2006] O.J. No. 2741 (S.C.J.); or
- An absence of due diligence and a careful examination of the materials on which the decision is founded: *Xentel DM Inc v. Windsor (City)*, (*supra*).

[50] I pause here to note that the *Municipal Act* was amended in 2006 to eliminate what was then s. 10(2) which stipulated that a bylaw could only differentiate between persons or businesses if they constituted "different classes". As well, the municipality's powers to create bylaws was amended to include business licensing. As a result, decisions before that date must be approached with caution, because they reflect an interpretation of the statute before the amendments.

[51] On the other hand, an absence of good faith can be demonstrated by the following:

- A careful approach to exercise of regulatory powers: *Toronto Livery Association v. Toronto (City)*, (2009), 58 M.P.L.R. (4<sup>th</sup>) 30 (Ont. S.C.J.);
- Long and public consultation and extensive efforts to obtain public input: *Marsh v. Chatham-Kent (Municipality)*, [2009] O.J. No. 3314 (S.C.J.);
- A decision making process characterized by openness, frankness and impartiality: *Pedwell v. Pelham (Town)* (2003), 37 M.P.L.R. (3d) 161 (Ont. C.A.)

[52] Finally, there is case law that stands for the proposition that bylaws will not discriminate against individuals in the same or similar positions without a rational basis. Discrimination without a rational basis is beyond the authority or *ultra vires* the lawmaking authority conferred upon a municipality by the legislature. Where a bylaw discriminates, there is an obligation of due diligence to identify a justifiable rationale.



Reasonable and proper grounds warranting such treatment must exist. See, for example, *Regina v. Sharma* (1993), 100 D.L.R. (4<sup>th</sup>) 167 at 179 (S.C.C.); *Xentel DM Inc.*, (*supra*); *H.G. Winton Ltd.*, (*supra*).

### Analysis

[53] It is not difficult to understand the applicant's concern about the dramatic increase in limousine licences and the competition that exists between taxicabs and limousine services. However, I am unable to conclude that the bylaw was passed in bad faith or that it discriminates on some impermissible basis.

[54] First, the *Municipal Act* permits the City to differentiate between taxicabs and limousines on any basis it considers appropriate as a matter of policy. The City has done so since the time of the old bylaw, if not earlier. It is significant that matters such as street hails, the use of taxi stands and the absence of a restriction on limousine licences are the same under both the new and old bylaws. It is apparent that the City had a rationale for this treatment as expressed in the 2004 BMA report. Council considered that the imposition of a cap would create a market for limousine plates as it had in the taxicab industry, which would potentially detract from service quality.

[55] Further, there is evidence of long and extensive public consultation and investigation. In the almost two year period between April 2010 (when the new bylaw was first raised) and its passage (in January 2012), ten reports from Civic Administration were considered and twelve opportunities for public input were provided. The evidence is that the industry was keenly interested in the bylaw under consideration and public meetings were well attended and the issues aired and debated.

[56] The industry players, including the applicant, had notice of the proposed fare structure, unlike in the *Langille* case. The applicant prepared and filed its own proposed bylaw that differentiated between the taxicab and limousine services and suggested a different limousine tariff. The president of the applicant testified on his cross-examination that he had access to civic administration during the process; he attended public meetings; the public participation meeting was well attended with many

speakers and committee members were attentive and took notes; and the City was aware of the applicant's position throughout the process.

[57] Mr. Kukurudziak's evidence was similar. He conceded that there was no prohibition on street hailing or on the number of limousine licences in the old bylaw. He agreed that the issues were debated in public at City Council. He helped prepare the report to the Community and Neighbourhoods Committee with a draft proposed bylaw reflecting the applicant's position. The report was forwarded to Civic Administration where it did not receive favour. He prepared a response but did not file it and similarly, he provided no written communication for the January 24, 2012 meeting.

[58] In addition, City staff conducted a review of taxicab and limousine tariffs to ascertain whether the 15% fare differential was being observed. Mr. Hoare has pointed out a defect in the methodology used but in my view, if such a defect exists, it is not fatal nor does it demonstrate bad faith. Mr. Hoare's retainer was limited and it appears that he did not have access to all of the relevant documents, including the bylaws, the BMA report and perhaps most significantly, the spreadsheet prepared by Civic Administration and attached to Mr. Katolyk's affidavit. He does not appear to have been asked to consider the difficulties in measuring and comparing limousine/taxicab fares for the reasons identified in Mr. Katolyk's July 19, 2011 report to the Community and Neighbourhoods Committee.

[59] It is apparent that the business of the taxicab industry and its concerns were prominent for the Committee and Council. Indeed, the City noted during one of the public participation meetings the estimated value of a taxicab owner's licence and that drivers had expressed concern that the high cost of leases had a direct impact on their ability to earn a reasonable living. Civic Administration recommended that any new licences not be leasable or transferrable and such a provision found its way into the new bylaw.

[60] It is true that Civic Administration had recommended that street hails be prohibited and that limousines not be permitted to park in taxi stands. City Council was

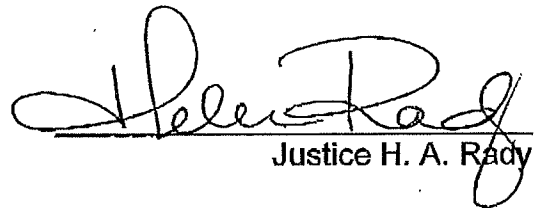
not bound to accept staff recommendations and in this case, it did not. Mr. Katolyk points out that this is not unusual in his experience. City Council is guided by the recommendations of staff but is not obliged to accept them. There is no evidence that City Council was motivated by improper considerations in deciding as it did.

[61] In my view, the City acted with candour and frankness in the process, engaged in a lengthy public consultative process with stakeholders, received submissions and exercised due diligence in arriving at its decision, all hallmarks of a good faith exercise of its powers.

[62] Perhaps Aboutown expressed it best in a submission it made to City Council on January 31, 2012:

Though the draft bylaw is not entirely what we had hoped for, it is a fair and workable bylaw that all parties can live with and will allow the vehicle for hire industries to move forward with business in London.

[63] For all of these reasons, the application is dismissed. I will receive brief written costs submissions first from the City by March 12 and from the applicant ten days later.

  
Justice H. A. Rady

**Released:** March 8, 2013

**CITATION:** London Taxicab Owners' et al v. Corporation of the City of London  
2013 ONSC 1460  
**COURT FILE NO.:** 7123/12  
**DATE:** 2013/03/08

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

LONDON TAXICAB OWNERS' et al

Applicant

- and -

CORPORATION OF THE CITY OF  
LONDON

Respondent

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**REASONS FOR JUDGMENT**

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H.A. RADY J.

**DATED:** March 8, 2013