



STAFF REPORT INFORMATION ONLY

Report on Outcome of Application to Quash Pedicab By-law

Date:	May 25, 2007
To:	Licensing and Standards Committee
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

A pedicab operator brought an application to the Superior Court to quash By-laws 1049-2004 and 512-2005 (the “Pedicab By-laws”) on the grounds that the Pedicab By-laws were, among other things, passed in bad faith, contained arbitrary restrictions and were prohibitory in that they would serve to put pedicab operators out of business.

Mr. Justice Belobaba heard the application and, in a decision released May 4, 2007, largely dismissed it. The Pedicab By-laws were upheld, except for the provision that imposed a maximum fare rate of \$30 for the first half-hour and \$15 for each successive half hour, or parts thereof.

Mr. Justice Belobaba held that the maximum fare restrictions were imposed without notice to stakeholders and without sufficient due diligence as to the appropriateness or likely impact of the rates that Council imposed. Therefore, he held that the rates were arbitrary and passed in bad faith.

Mr. Justice Belobaba did find that Council had jurisdiction to impose maximum fare restrictions, provided that the correct procedure was followed.

Mr. Langille was ordered to pay the City \$6,500 as partial compensation for legal expenses incurred by the City in responding to this application.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

ISSUE BACKGROUND

A pedicab operator, Michael Langille (operating as Rickshaw Runners), brought an application to quash the Pedicab By-laws. The application was commenced December 1, 2005. The application was argued before the Ontario Superior Court of Justice on April 18, 2007. The decision was rendered May 4, 2007. The decision is available through the Internet and a hypertext link is included at the end of this Report.

The notice of application attacked all of the provisions in the Pedicab By-laws. Among other things, the application alleged that the Pedicab By-laws:

1. were passed in bad faith in a colourable attempt to cause Mr. Langille to lose his business as punishment for the fact that he continued to advertise body rub parlours on his pedicabs after being asked by the City to discontinue this practice;
2. were prohibitory in that the Pedicab By-laws restricted the operation of pedicabs to such an extent that the business was not economically feasible; and
3. included a definition of aggressive solicitation that was vague and uncertain.

COMMENTS

Most Restrictions Imposed by the Pedicab By-laws Were Upheld

Mr. Justice Belobaba of the Ontario Superior Court of Justice upheld the provisions in the Pedicab By-laws that prohibit pedicabs from:

1. operating on Front, Queen, or King Streets (between Spadina Avenue and Jarvis Street) or Gerrard Street (between Bay and Yonge Streets); and
2. operating on all City streets between 3:30 and 6:30 p.m. Monday to Friday, excluding statutory holidays;
3. operating on sidewalks; and
4. aggressively soliciting passengers (which prohibits operators from creating a disturbance or loud noise, physically obstructing or interfering with any person, or continuing to solicit a person after that person has refused an offer of services).

Other provisions of the Pedicab By-laws that were upheld included restrictions requiring pedicab operators to disclose the fare in writing in advance of the ride (using an information disclosure and receipt form approved by the City), and requiring pedicab drivers to have a valid Ontario driver's license.

Previously existing provisions in the Municipal Code governing the licensing and regulation of pedicabs that were unchanged by the Pedicab By-laws were not considered in this court proceeding.

The foregoing restrictions were upheld by Mr. Justice Belobaba because he found that they were enacted through a reasonably transparent process, with proper notice, opportunity for industry input, and due consideration of the evidence provided by staff or within the

knowledge of Councillors. Therefore, there was no basis for Mr. Langille’s allegations that there was an arbitrary or unfair process followed in enacting these restrictions.

Provision Imposing Maximum Rates Was Quashed

The Pedicab By-laws included a restriction that required pedicab operators to charge passenger a maximum of \$30 for the first half-hour or part thereof and \$15 for each successive half-hour or part thereof. This restriction was quashed.

Mr. Justice Belobaba quashed this restriction in the Pedicab By-laws on the basis that Council had failed to:

1. provide adequate notice to stakeholders of its intention to impose such a restriction;
2. provide meaningful opportunity for stakeholders to comment upon the proposed restriction; and
3. conduct adequate investigations into the impact of the proposed maximum fare to satisfy its obligation to have evaluated the implications of its decision.

Mr. Justice Belobaba held that the City’s decision to set a maximum fare required, at a minimum, that there be: notice to stakeholders; a reasonable opportunity for them to provide input; and evidence that the rate set was, in his words, “not just a number picked out of the air.”

In this case, the maximum rate restriction did not pass this test, according to the Court, in several respects. First, a discussion paper circulated to stakeholders for comment did not indicate that the City was considering imposing a fixed maximum fare, nor the amount of the maximum fare being considered. Second, the staff report recommended that a time-based scheme for charging fares replace the per block charge; no recommendation was made in the staff report for a fixed maximum fare. Therefore, the Court held that Council's imposition of the maximum fare was made without notice to or input from the pedicab industry and that there was no investigation as to what the appropriate maximum fare should be (or the potential economic consequences).

Unlike other restrictions related to issues such as traffic or sidewalk congestion (on which Councillors could “tap into their own personal knowledge of the City”), Mr. Justice Belobaba held that Councillors could not be expected to have personal knowledge of issues regarding the maximum fare. Therefore, the Judge concluded that the imposition of a maximum fare on pedicab operators was arbitrary and procedurally unfair, and quashed this restriction in the Pedicab By-laws on the basis that it was passed in bad faith.

Conclusion

If, the City wishes to impose a time-based rate system upon pedicab drivers, there remains a strong case that it has the authority to do so if it determines that such a restriction will protect consumers and/or will serve the economic, social or environmental well-being of the City. In fact, in referring to all the restrictions in the Pedicab By-laws (including the rate restrictions), Mr. Justice Belobaba started by saying that “there is no question that the restrictions imposed under the two pedicab bylaws are within the jurisdiction of City Council.”

However, before a by-law imposing maximum fare restrictions on pedicabs is enacted, the City must ensure that:

1. the decision(s) being considered by the Licensing and Standards Committee and Council is communicated to stakeholders;
2. stakeholders are provided with a meaningful opportunity to comment (either in writing or at the public meeting that must be held) on the decision(s) being considered;
3. comments and information received through this consultation process must be evaluated by the Licensing and Standards Committee and Council; and
4. the basis for any decision to select a particular rate as the maximum rate must be clearly articulated in order to satisfy Council’s obligation to have done sufficient due diligence before a decision is made and to ensure that a particular rate chosen as the maximum cannot be characterized as having been chosen on a whim or arbitrarily.

No appeal of this decision is recommended. The Executive Director, Municipal Licensing and Standards, agrees with this recommendation.

On May 22, 2007, Mr. Justice Belobaba ordered that Mr. Langille pay the City \$6,500 in costs within 30 days.

CONTACT

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SIGNATURE

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