**Court File No. 06-CV-315453PD2**

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**TORONTO LIVERY ASSOCIATION**
**ONTARIO LIMOUSINE OWNERS' ASSOCIATION**
**and TARAS DANYLEVICH, personally**
**and on behalf of certain individuals holding**
**one or more standard livery licences with the City of Toronto**

Applicant

- and -

**CITY OF TORONTO**

Respondent

Application heard April 24, 2008

## Counsel

I.Matckars for applicants
M.Wright for respondent

**REASONS FOR DECISION OF BACKHOUSE, J. RELEASED APRIL 28, 2008**

### Overview

[1] The applicants seek to quash by-law 707-2005 in its entirety. The applicants complain that the City failed in its duty to consult and that certain portions of the by-law were unreasonable, unfair or passed in bad faith. After this application was commenced, certain portions of the by-laws which the applicants had objected to were amended by the City. The *Municipal Act*, 2001, S.O.2001,c.25 under which the by-law was passed was replaced with the *City of Toronto Act, 2006* S.O.2006, C.11 which gave the City sweeping powers and deemed existing by-laws to have been made under it. I held that the City met its duty to consult, that the impugned portions of the by-law were rational regulations in the public interest and that there was no basis for quashing them.

### Portions of the by-law objected to

[2] The applicants object to the following sections in By-law 706-2005:

(a) Code section 545-474 and 545-475, By-law 706-2005 replaced by 1417-2007, para. 11

The applicants' submission is that the effect of these provisions is that licences are no longer transferable.

(b) Code section 545-486 and 545-485, By-law 706-2005, amended by 1417-2007, para. 22

These provisions require that all limousine trips must be pre-arranged a minimum of 20 minutes in advance.

(c) Code section 545-482.A(1) and (2), By-law 7006-2005; replaced by 1417-2007, para.19 & 20

A minimum rate of $70 per hour for the first two hours or part thereof was imposed.

(d) Code section 545-487, By-law 706-2005

A prohibition on staging prevents limousines that are not engaged for a trip from parking or stopping in a loading or curbside area (not including a parking lot) within 200 metres of an entertainment venue or hotel.

(e) Code section 545-490; By-law 706-2005; amended by 1417-2007 para.27

All limousine owners and drivers must enter into a service agreement with a limousine service company.

(f) Code section 545-488R;Bylaw 706-2005

Limousine service companies must have a central place of business.

(g) Code section 545-489;Bylaw 706-2005; modified by 217-2006 which added subsection D;replaced by 1417-2007, para.24

Limousine service companies must maintain service agreements for at least one stretch limousine and two sedan limousines. Limousine service companies must operate a certain number of stretch limousines in proportion to the number of sedans they operate. Limousine owners who held licences as at May 19, 2005 are exempt from these requirements but this is not a transferable right.

(h) Code section 545-476;By-law 706-2005

A vehicle cannot be used as a sedan limousine if it is older than 5 model years. A vehicle cannot be used as a stretch limousine if it is older than 8 model years.

(i) Code section 545-488L;By-law 706-2005; replaced by 1417-2007, para.23; amended by 230-2008, para.2

Limousine operators who refused service to a person who has pre-arranged a trip on the basis that they have a previous fare may be required to provide information to Municipal Leasing and Standards staff as to the name and address of that fare; failure to comply is an offence.

**Scope of Powers**

[3] Bylaw 707-2005 was passed under the *Municipal Act*, 2001, S.O.2001, c.25. The limited licensing powers under the *Municipal Act* have been replaced by the sweeping powers under the *City of Toronto Act, 2006*, S.O.2006, C.11. Bylaw 707-2005 is deemed to have been made under the *City of Toronto Act, 2006.*

[4] Section 150(2) of the *Municipal Act* provided that a municipality may only exercise its licensing powers, including imposing conditions, for one or more of the following purposes:

1.Health and safety.

2.Nuisance control.

3.Consumer protection.

[5] In 2006, the *City of Toronto Act,* 2006 S.O.2006, C.11, replaced the *Municipal Act.* The relevant provisions are set out below:

"**Scope of powers**

6.(1) The powers of the City under this or any other Act shall be interpreted broadly so as to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City's ability to respond to municipal issues.

**Broad authority**

8.(1) The City may provide any service or thing that the City considers necessary or desirable for the public.

**City by-laws**

(2) The City may pass by-laws respecting the following matters:

1.Governance structure of the City and its operations and of its local board (restricted definitions) and their operations.

2.Accountability and transparency of the City and its operations and of its local boards (restricted definitions) and their operations.

3.Financial management of the City and its local boards (restricted definitions).

4.Public assets of the City acquired for the purpose of exercising its authority under this or any other Act.

5.Economic, social and environmental well-being of the City.

6.Health, safety and well-being of persons.

7.Services and things that the City is authorized to provide under subsection (1).

8.Protection of persons and property, including consumer protection.

9.Animals.

10. Structures, including fences and signs.

11.Business licensing.

**Scope of by-law making power**

(3) Without limiting the generality of section 6, a by-law under this section respecting a matter may,

(a) regulate or prohibit respecting the matter;

(b) require persons to do things respecting the matter;

(c) provide for a system of licences respecting the matter.

**Scope of by-laws generally**

10.(1)Without limiting the generality of section 6 and except as otherwise provided, a by-law under this Act may be general or specific in its application and may differentiate in any way and on any basis the City considers appropriate.

**Restriction on quashing by-law**

213. A by-law of the City or a local board of the City 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, etc.**

214.(1) Upon the application of any persons the Superior Court of Justice may quash a by-law order or resolution of the City or a local board of the City in whole or in part for illegality.

**Continuation of authority for by-laws, etc.**

419. (4) Without limiting the generality of subsections (2) and (3), if a by-law, resolution, order or rule that is in effect immediately before section 7.1 of the *Municipal Act, 2001* comes into force was made by the City under a provision of that Act for which there is a corresponding provision of this Act, the by-law, resolution, order or rule remains in effect on the day on which section 7.1 of that Act comes into force and the by-law, resolution, order or rule is deemed to have been made by the City under the corresponding provision of this Act."

**Duty to Consult**

[6] The applicants complain that the City did not carry out appropriate public consultations before enacting By-law 706-2005. Specifically, they complain that:

a. No or insufficient public notice was provided of the Committees meetings and the notice provided was only in English;

b. Deputants were permitted to speak for 5 minutes and did not receive further opportunities to speak after Councillors asked City staff questions or when Councillors amended recommendations made in the staff report;

c. They did not receive a copy of the draft by-law in its final form before it was enacted; and

d. No deputations were received by Council itself when Council was considering the recommendations received from the Planning & Transportation Committee.

[7] The applicants submit that licencees and those who had expressed an interest in obtaining licences should have been notified by mail or there should have been publication in a newspaper of general circulation of the public meeting.

[8] The City submits that in response to the limousine industry's demands that the cap on the total number of limousine owner licences be removed, the City commenced consultations with the industry in 2001. The purpose of these consultations was to evaluate the then-existing licensing regime for limousines, consider if proposed changes were needed, and make recommendations to Council. The consultation process extended from 2001 to April, 2005. In this four year period, 5 public committee meetings were held at which councillors discussed issues related to the licensing of limousine owners and the proposed changes being contemplated. Many additional meetings between staff and industry representatives took place. The City submits that it complied with its obligation to provide public notice of its intention to enact legislation, hold a public meeting and to permit people to be heard at the Committee or Council meetings at which decisions were made.

[9] The City's procedural by-laws provide that public notice is to be provided by posting notices on the City's official website at least 5 days in advance of the meeting. In this case the public notice provided on April 18, 2005 contained a description of the issues to be considered to inform readers of the general nature of the matters that would be considered by the Planning and Transportation Committee on April 25, 2005, and it provided information as to how

additional information could be obtained, to whom questions could be directed and how individuals could arrange to speak to the matter at the Committee meeting.

[10] At the Planning and Transportation Committee meeting on April 25, 2005, individuals were permitted 5 minutes each to address any issues they wished to raise for the Councillors present, and Councillors were permitted to ask deputants questions. Following the deputations, Councillors were permitted to ask staff questions and then they discussed the issues and voted as to the recommendations to be made to Council. This procedure was in accordance with the City's procedural by-law.

[11] On April 25, 2005, 21 individuals made deputations and Councillors also received written submissions for their consideration. Among the speakers were Mr. McCutcheon and Mr. Ironi, the then-president of the Ontario Limousine Owners' Association (OLOA). Mr. McCutcheon is the current President of the OLOA and President of one of the two largest licenced livery and limousine companies in Toronto. In his deputation, Mr. McCutcheon expressed his concerns about the staff recommendations with respect to limousine service companies, the age of vehicle requirements, the lack of transferability of licences, the minimum rate to be imposed for service, and the stretch to sedan limousine ratio being proposed for limousine service companies, which are the same concerns raised in this application.

[12] The applicants' notice of constitutional question asserts that some individual limousine licence holders were discriminated against by the City because English is not their first language. The complaint is that those licence holders did not actually receive the required public notice because it was only provided in English and they could not understand the City's minutes of proceedings.

[13] The *Toronto Act* provides that all proceedings of Council and Committee may be conducted in English or in both English and French and that all minutes of the proceedings of Council or Committee shall be kept in English or in both English and French. Accordingly, the City may conduct business in English or in English and French, but it has no obligation to conduct business in any language other than English. Moreover, while the City does not dispute the applicants' evidence that English is not the first language of some limousine licence holders, all licence holders are required to be able to speak, read and write the English language as a condition of receiving a licence.

## Findings

### Duty to Consult

[14] None of the complaints regarding the duty to consult constitutes an allegation that the City did not follow its procedural By-law or comply with the applicable provisions of the *Municipal Act, 2001*. The applicants simply assert that the process established pursuant to the *Municipal Act, 2001* and the City's procedural by-law is not satisfactory.

[15] In 2005 when By-law 707-2005 was passed, the *Municipal Act, 2001* required that the City advise the public of its intention to pass a by-law and hold a public hearing. The specific manner in which public notice could be given was within the discretion of the City. It passed a by-law dealing with notice with which it complied. I do not find that it was discriminatory to give notice of the public meeting in English only. Licensees are required to be able to speak, read and write the English language. It was conceded by Mr. McCutcheon on cross-examination that individuals who held limousine licenses were generally aware of the fact that the City was undertaking a review of the licensing requirements for limousines. The fact that so many individuals made deputations at the public meeting on April 25, 2005 suggests that the notice that was given was adequate.

**Unreasonableness or unfairness**

[16] The essence of each of the applicants' attacks on the objected to portions of the by-law is that the provisions are unreasonable and/or unfair. In *Equity Waste Management of Canada v. Halton Hills(Town)*(1997), 35 O.R.(3d) 321 (C.A.), Justice Laskin adopted the deferential approach for a court reviewing the legality of a by-law as articulated by Justice McLaughlin in *Shell Canada Products Ltd. v. Vancouver (City)*, (1994), 110 D.L.R.(4th) 1 (S.C.C.) at p. 25:

> "The weight of current commentary tends to be critical of the narrow, pro-interventionist approach to the review of municipal powers, supporting instead a more generous, deferential approach: Stanley M. Makuch, Canadian Municipal and Planning Law (Toronto:Carswell, 1983), at pp.5-6; McDonald, op.cit.;Arrowsmith, op.cit., at p.219. Such criticism is not unfounded. Rather than confining themselves to rectification of clear excess of authority, courts under the guise of vague doctrinal terms such as "irrelevant considerations", "improper purpose", "reasonableness" or "bad faith" have not infrequently arrogated to themselves a wide and sweeping power to substitute their views for those of the elected representatives of municipalities. To the same effect, they have "read in" principles of statutory construction such as the one which states that a by-law cannot affect "common law rights" unless the statute confers authority to do so in "plain language or by necessary implication": City of Prince George v. Payne (1977), 75 D.L.R.(3d) 1 at p.4, [1978] 1 S.C.R.458, 2 M.P.L.R.162. The result is that, to quote McDonald (at p.79), "despite the court's protestations to the contrary, they do, in fact, interfere with the wisdom which municipal councils exercise".
>
> Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils.
>
> At p.27, she concluded that the court should adopt a generous, deferential standard of review:
>
> These considerations lead me to conclude that courts should adopt a generous, deferential standard of review toward the decisions of municipalities. To say this is not

new. Lord Greene said it in Wednesbury, and his words have been oft-quoted in Canada. Nevertheless, many courts have continued to take a narrow interventionist approach to municipal decisions."

[17] This policy of deference now has a statutory foundation in s.213 of the *City of Toronto Act* quoted above. Therefore, as a matter of law, the by-law cannot be set aside solely because of unreasonableness.

[18] I recognize that it may be the case that if a by-law is so unreasonable that there is no rational connection between the provision and any legitimate City regulatory interest, that a Court could find bad faith.

[19] In my opinion, each of the impugned by-law provisions relates to a legitimate concern in terms of regulating the limousine industry. This regulation does not occur in a vacuum. The City also regulates the taxi industry. Its goal of ensuring that each industry can operate in the public interest is rational.

[20] The ratio of stretch limousines to sedans is designed to limit the number of limousines. Although other means might have been selected, the goal of limitation is a rational one. The City did not have to exempt pre-2005 licence holders from this ratio. Having decided to do so, it is not required to make the exemption available to the heirs or assignees of licence holders.

[21] I have chosen to discuss this one feature of the by-law notwithstanding that attacks on unreasonableness are prohibited. Suffice to say with respect to the other provisions that these are also rational regulations in the public interest. I accept the City's evidence and submissions of the purpose for which each provision was enacted.

[22] The applicants did not contend that the impugned provisions exceeded the City's statutory powers.

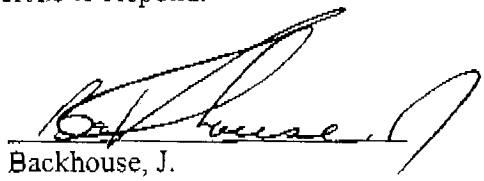
[23] There is no evidence of bad faith. The long consultation process is indicative of a careful approach to the City's powers of regulation and bespeaks the absence of both bad faith and arbitrariness.

**Conclusion**

[24] Accordingly, the application is dismissed.

[25] Brief submissions as to costs and quantum may be made in writing. The City shall have 14 days from the release of this decision to make submissions. The applicants shall have 14 days from the receipt of the City's submissions to respond.

Released April 28, 2008



Backhouse, J.