Affleck Greene McMurtry LLP Barristers and Solicitors

Michael I. Binetti
Email: mbinetti@agmlawyers.com
Direct Line: (416) 360-0777

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Members of Toronto City Council
c/o Ms Marilyn Toft
City Clerk's Office
City of Toronto
West Tower, City Hall
12th Floor
100 Queen St W
Toronto ON M5H 2N2

Dear Members of Council:

Re: Item LS9.4 - Calgary Injunction Decision regarding Unlicensed Ground Transportation Providers

We are the lawyers for the Accessible Taxicab Association of Ontario. Our client asked us to write to City Council subsequent to the Licensing and Standards Committee meeting of last January 22, 2016. We have reviewed the materials filed for the Committee meeting and the video of the deputations made.

We continue to be of the opinion that the City would be successful if it brought an application pursuant to Section 380 of the *City of Toronto Act, 2006* ("COTA") for a restraining order against Uber to prevent the operation of the unlicensed UberX service contrary to Chapter 545 of the Toronto Municipal Code. Section 380 permits the City to bring an application for a restraining order "in addition to any other remedy and to any penalty imposed by the by-law." As such, the City has more than one tool at its disposal to enforce the by-law. Section 380 is the best one. An application under s. 380 can be brought in very short order and would require less than two hours in court to argue. There would be no facts in dispute. It would be the most cost effective and efficient way of proceeding. Moreover, an application under s. 380 would not prevent other enforcement actions.

Taxicab Definitions Changed to Capture Uber

In his 2015 decision regarding the City's first attempt at an injunction, Justice Dunphy ruled that Uber's operations did not meet the definition of "taxicab brokerage" because UberX vehicles were not taxicabs. His Honour also ruled that Uber did not "accept calls" such that it would be captured by the definition of "limousine service company."

In direct response to this ruling, City Council amended Chapter 545 to capture the UberX system. There can be no doubt that the intention of City Council was to capture the UberX service. On October 2, 2015, the City enacted By-law No. 1047-2015, which contains the following recitals, amongst others: "Whereas persons enabled by the use of modern technology have advanced narrow interpretations of the provisions of Chapter 545 to justify the operation of unlicensed and unregulated taxicab and limousine services, including brokerage services; and Whereas the operation of unlicensed and unregulated taxicab and limousine services, including brokerage services, is contrary to the public interest, the economic, social, and environmental well-being of the City, the health, safety, and well-being of persons, and the protection of persons and property, including consumer protection; and Whereas City Council deems it necessary and expedient to amend Chapter 545 to ensure that all taxicab and limousine services, including brokerage services, are operated by persons licensed and regulated by the City regardless of the type of technology used in the provision of those services."

Today, "any person who offers or licenses a smartphone application, website, or other technology that connects passengers with" taxicab or limousine services is taxicab broker. Uber – in its various corporate iterations – is a taxicab broker.

Appropriate Remedy is Section 380

We have litigated with the City on many occasions. At each instance, the City takes the position in its court filings that "City Council is Supreme" in the context of judicial reviews of decisions made by City Council. If that is the case, then the City must attempt to enforce its own by-laws in a manner that is consistent with what is expected in a free and democratic society. This means that the City cannot and should not act arbitrarily when it chooses which by-laws to enforce or not.

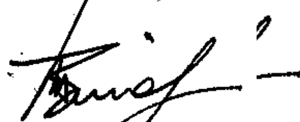
Currently, staff have indicated that they are taking enforcement actions against UberX drivers directly. In the face of the by-law amendments, this approach requires more effort, time and must surely cost more than an application under s. 380 of COTA. It is also the less effective enforcement tool.

COTA contains a specific provision dealing with contraventions of City by-laws. Operation of the UberX system is a clear contravention in that there can be no doubt that the UberX system is captured by the revised by-law (it was amended for that specific purpose). It seems counterintuitive to attempt to enforce the by-law against individual drivers resulting in challenges in court on a driver-by-driver basis rather than a simple and quick application under s. 380.

Simply put, the will of City Council can and must be enforced. That the by-law is not being enforced is a direct challenge to the nature of this democratic institution. Whether decisions may or may not be made in the future does not change the fact that the by-law is being contravened today. If that was a relevant consideration, then what was the point of changing the by-law?

We have reviewed the opinion styled "Opinion Re Toronto V Uber" filed by Harvey Spiegel, Q.C. on this item. We agree that the City is the most logical and likely best-placed party to bring an application under s. 380 to enforce its own by-law. The recitals to the October 2015 by-law amendments make clear that the City was acting in the public interest (i.e., that the UberX service, as an unlicensed service, is "contrary to the public interest, the economic, social, and environmental well-being of the City, the health, safety, and well-being of persons, and the protection of persons and property, including consumer protection.") and as such, it should attempt to enforce its own by-law.

Sincerely,
Affleck Greene McMurtry LLP



Michael Binetti
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