

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

METRO TAXI LTD., MARC ANDRE WAY, and ISKHAK MAIL

Plaintiffs

– and –

CITY OF OTTAWA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Issued: 12 Aug, 2016 "Registrar"
Date: December 30, 2016 Issued by:.....

Local registrar
161 Elgin Street
Ottawa ON K2P 2K1

TO: City of Ottawa
Ottawa City Hall
110 Laurier Avenue West
Ottawa, Ontario, K1P 1J1

CLAIM

1. The plaintiffs claim, on their own behalf and on behalf of the Class:
 - a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 certifying this action as a class proceeding and appointing the plaintiffs as the representatives of the Class;
 - b) an order declaring that the by-law passed on April 13, 2016 with respect to private transportation companies is *ultra vires* and invalid;
 - c) an order declaring that the City has unlawfully failed to enforce By-law 2012-258 (the "Taxi By-law") against Uber, as defined in the statement of claim, since September 2014;
 - d) damages in the amount of \$215,000,000;
 - e) a declaration that fees collected from the City from Class Members under the Taxi By-law are *ultra vires* and an order for restitution of those fees;
 - f) an order directing a reference or giving such directions as may be necessary to determine issues not determined at the trial of the common issues;
 - g) pre and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
and
 - h) costs on a substantial indemnity basis.

The parties to the action and related parties

2. The defendant, the City of Ottawa (the "City"), is a municipality incorporated pursuant to the laws of the Province of Ontario.

3. The plaintiff, Metro Taxi Ltd., carrying on business as Capital Taxi, holds a licence to operate and dispatch taxicabs in the City of Ottawa, and is a “taxicab broker” (“Broker”) under the Taxi By-law.

4. The plaintiff, Marc Andre Way, holds licences (“Plate” or “Plates”) to operate taxicabs in Ottawa, and is a “taxicab plate holder” (“Plate Owner”) under the Taxi By-law.

4a. The plaintiff, Iskhak Mail, became a Plate Owner on or around 2013. Iskhak Mail was born in Afghanistan. As an adult, he immigrated to Canada and became a citizen. Iskhak Mail’s national and ethnic origin and ancestry is Afghani. Iskhak Mail’s first language is Persian and his religion and creed is Islam.

5. In this pleading, “Class” or “Class Members” means all persons who were Plate Owners, Brokers, or both, on or after September 1, 2014, regardless of the number of Plates owned by such persons.

6. Uber B.V., Rasier Operations B.V., Uber Canada Inc. and/or Uber Technologies, Inc. (collectively, “Uber”) collectively operate a taxi service in the City of Ottawa, as further described below.

Background

The regulatory scheme for taxi services in Ottawa

7. The City and its predecessor municipalities began regulating taxi services in Ottawa in or around 1960. Since that time, the City’s regulatory scheme of taxi services has consistently included the following elements:

- a) The City has required a licence to operate a taxi (a “Plate”) and a licence to operate as a taxicab broker (a service which dispatches taxis in response to customer requests);

- b) The City has regulated and monitored the rates charged for taxi services and the number of Plates to ensure a balance between reasonable earnings for Class Members and reasonable services for the public;
 - c) The City has fixed the number of Plates relative to the population of the City of Ottawa, and has actively maintained a cap thereon;
 - d) The City has granted an exclusive right to Plate Owners to operate "taxicab services" within Ottawa;
 - e) The City has required Brokers to only dispatch taxis with Plates; and
 - f) The City has permitted the sale or lease of Plates.
8. As a result of the City's regulatory scheme, Plates have a market value.
9. The Taxi By-law establishes the particulars of the regulatory scheme as of September 1, 2014. Under the Taxi By-law, it is an offence to operate an unlicensed taxicab or as an unlicensed taxicab broker. The Taxi By-law also imposes various fees on Plate Owners and Brokers.
10. The Taxi By-law defines "taxicab," "taxicab service," "taxicab broker", and "dispatch" as follows:

"taxicab" means a motor vehicle with seating capacity of not more than seven (7) individuals, including the driver, that is intended to be used or is actually used for hire for the purpose of transporting a person and includes an accessible taxicab and a standard taxicab but does not include a limousine;

"taxicab service" means the transportation of a passenger by taxicab from a point in the regulated area to any point within or beyond the regulated area;

“taxicab broker” means a person who accepts calls in any manner for the dispatch of taxicabs and which taxicabs are not owned by that person or that person’s immediate family or employer; and

“dispatch” means the act or service of sending or directing a taxicab, by electronic or any other means, to a person or persons who have requested taxicab service but does not include a request made directly to a taxicab driver.

11. Under the statutory, regulatory, and administrative framework of the regulatory scheme, including the Taxi By-law, the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “Act”), the *Provincial Offences Act*, R.S.O. 1990, c. P.33, and a memorandum of understanding with the Attorney General of Ontario, the City has the responsibility to investigate and prosecute contraventions of the regulatory scheme, including the responsibility to investigate and prosecute persons who operate unlicensed taxicabs or unlicensed taxicab brokerages.

Events between September 2014 and April 2016

12. In or around September 2014, Uber began operating the following service in the City of Ottawa:

- a) Uber engaged drivers willing to provide transportation services for hire from within Ottawa to other points in Ottawa or outside of Ottawa;
- b) Through electronic means, Uber accepted calls from customers wishing to engage its drivers; and
- c) Uber dispatched drivers to customers by electronic or other means.

Uber’s drivers therefore operated taxicabs within the meaning of the Taxi By-law. Uber operated as a taxicab broker within the meaning of the Taxi By-law. Uber and its drivers therefore required licences pursuant to the Taxi By-law.

13. Uber and its drivers did not obtain licences. Uber's drivers did not purchase Plates. Uber and its drivers did not comply with various other requirements of the Taxi By-law for operating taxicabs and taxicab brokerages and, in particular, did not pay any of the fees payable under the Taxi By-law.

14. The Class Members asked the City to take reasonable steps to enforce the regulatory scheme against Uber and Uber's drivers. The City prosecuted a limited number of Uber's drivers. The City did not take any steps to enforce the regulatory scheme against Uber. Uber continued to operate its services in the City of Ottawa. The City knew that Uber would continue operating its services unless the City took steps to enforce the regulatory scheme against Uber or took meaningful and reasonable steps to enforce the regulatory scheme against Uber's drivers.

The Amendments

15. On April 13, 2016, the City enacted amendments to the regulatory scheme, with a coming-into-force date of September 30, 2016 (the "Amendments").

16. The Amendments purport to create a new class of licence for "Private Transportation Companies" such as Uber. The Amendments provide a number of advantages to Uber and its drivers not available to the Class Members, including the following advantages in particular:

- a) Uber and its drivers are not required to pay the same fees as Class Members in order to operate a taxi;
- b) Uber and its drivers are not required to purchase or lease Plates in order to operate taxis or pay the associated fee with registering and renewing Plates;
- c) Uber and its drivers are not required to charge regulated rates;
- d) Uber drivers are not required to install in-vehicle cameras;

- e) Uber drivers are not required to submit driver abstracts, police records, or proof of adequate insurance to the City;
- f) Uber is not required to maintain a minimum percentage of its fleet as accessible taxicabs; and
- g) Uber drivers are not required to collect and remit HST or to provide passengers with a receipt indicating the Goods & Services Tax included in the fare.

17. In enacting the Amendments, the City did not consider the value of Plates and the expectations of Class Members to be relevant considerations.

The City negligently failed to enforce the regulatory scheme

The City owed a duty of care to Class Members

18. The City and the Class Members were in a relationship of proximity in which the City's failure to take reasonable care would foreseeably cause loss or harm to Class Members. In particular, the City's failure to take reasonable care to maintain the integrity of the regulatory scheme would foreseeably cause loss or harm to Class Members.

19. The following circumstances enhanced the relationship of proximity between the City and the Class Members:

- a) The City created and maintained a regulatory scheme for taxi services in Ottawa;
- b) In order to function effectively, the regulatory scheme required investment by Class Members and collaboration between the City and Class Members;
- c) The Class Members have a significant interest in the integrity of the regulatory scheme;

- d) The City regulated and monitored the rates charged for taxi services and the number of Plates to ensure a balance between reasonable earnings for Class Members and reasonable services for the public;
- e) The regulatory scheme created and maintained the market value of the Plates;
- f) The City actively and deliberately encouraged the growth in the market value of the Plates including, in particular, by permitting and facilitating the sale of Plates and maintaining a cap on the number of Plates issued;
- g) The City closely monitored the market value of Plates by requiring purchasers of Plates to provide affidavit evidence indicating the consideration paid for the taxi business;
- h) The City represented to Class Members that sound public policy reasons justified maintaining the market value of the Plates and maintaining the limits on the number of Plates issued by the City;
- i) When making changes to the regulatory scheme that affected the market value of the Plates, the City provided Class Members with a reasonable period to adjust to the changes;
- j) The City directly benefitted from the market value of the Plates, including through fees levied on the transfer of Plates; and
- k) The Class Members reasonably relied on the City's actions to change their position, in particular by purchasing Plates and maintaining taxi businesses, and the City was aware of this reliance.

20. As a consequence of the direct and close relationship between the City and the Class Members, the failure of the City to take reasonable steps to maintain the integrity of the regulatory scheme would foreseeably cause loss or harm to Class Members. There is no policy reason why a duty of care should not be recognized.

21. On the contrary, there are sound public policy reasons to recognize a duty of care. In particular, the recognition of a duty of care encourages investment in the taxi industry in Ottawa by assuring stakeholders that the City will take reasonable care in its operational decisions to avoid causing loss or harm to stakeholders.

The City breached its duty of care

22. The duty of care required the City to take reasonable steps to maintain the integrity of the regulatory scheme.

23. The City breached its standard of care by taking no steps to enforce the regulatory scheme against Uber and taking vastly inadequate steps to enforce the regulatory scheme against Uber's drivers.

24. The failure of the City to enforce the regulatory scheme was an operational decision and was not based on economic, social, or political factors. The failure of the City to enforce the regulatory scheme did not result from a policy decision of the City made in good faith.

The City has unlawfully refused to enforce the regulatory scheme

25. The City had a public duty, pursuant to the Act, its by-laws, the *Provincial Offences Act*, and a memorandum of understanding between the City and the Attorney General of Ontario, to investigate and prosecute contraventions of the regulatory scheme. Furthermore, the City had a duty, under section 106 of the Act, not to confer an obvious advantage on a commercial enterprise not available

to other enterprises and, in particular, not to give a total or partial exemption to any commercial enterprise from any levy, charge, or fee.

26. Beginning in September 2014, the City refused to carry out its duty by failing to take any steps to enforce the regulatory scheme against Uber and failing to take reasonable steps to enforce the regulatory scheme against Uber's drivers. The City's refusal to enforce the regulatory scheme is not defensible, justifiable, or intelligible. The City's refusal conferred an obvious advantage on Uber and its drivers not available to Class Members, contrary to section 106 of the Act.

The Amendments are unlawful

27. The Amendments are *ultra vires* and unreasonable. In particular:

- a) In developing the amendments, the City ignored relevant considerations, including the rationale of the regulatory scheme and the reliance of Class Members on the regulatory scheme;
- b) In developing the amendments, the City fettered its discretion by refusing to consider the market value of Plates, a value which the City itself had created and encouraged. This refusal was inconsistent with past amendments to the regulatory scheme, in which the City considered and took into account the impact of regulatory changes on the interests of Class Members; and
- c) By providing Uber and its drivers with various advantages not available to Class Members, the Amendments also discriminate against Class Members and confer an obvious advantage on Uber and its drivers, contrary to section 106 of the Act.

28. Furthermore and in the alternative, the Amendments were unreasonable and *ultra vires* because they did not provide Class Members with reasonable notice of the changes to the regulatory scheme. This was inconsistent with previous changes to the regulatory scheme, in which the City provided Class Members with a reasonable adjustment period.

The Amendments are discriminatory

28a. In comparison to the population of Canada, a disproportionate number of Plate Owners are members of minority groups in terms of race, colour, ancestry, ethnic or national origin, religion or creed, language, place of origin, and citizenship.

28b. Race, colour, ancestry, ethnic or national origin, religion or creed, language, place of origin, and citizenship are personal characteristics protected under section 15 of the *Charter of Rights and Freedoms* and Part I of the *Human Rights Code*, R.S.O. 1990, c. H.19.

28c. The Amendments and the City's failure to enforce the regulatory scheme impose disproportionate burdens on the minority groups described above, and therefore create a distinction on the basis of race, colour, ancestry, ethnic or national origin, religion or creed, language, place of origin, and citizenship.

28d. The distinction constitutes substantive discrimination under section 15 of the *Charter of Rights and Freedoms* and *prima facie* discrimination or unequal treatment under the *Human Rights Code* with respect to services, contracts, and employment. The particulars of this discriminatory distinction, discrimination, and unequal treatment include the following:

- a) The minority groups described above have been and remain subject to historic disadvantage, stereotyping, and prejudice.

- b) As the result of this historical disadvantage, stereotyping, and prejudice, these minority groups entered the taxi services industry in Ottawa and purchased Plates in disproportionate numbers.

- c) The Amendments and the failure of the City to enforce the regulatory scheme impose disproportionate burdens on these minority groups, perpetuating their historic disadvantage and widening the gap between these minority groups and the rest of society.

The City collected ultra vires taxes

29. The Taxi By-law provides for the payment of fees by Class Members. In particular, to maintain their licence, Class Members must pay a renewal fee, a processing fee, and fees for mandatory inspections. Plate Owners must also pay a fee to transfer their Plate. The City has collected these fees from Class Members since the enactment of the Taxi By-law. Prior to the enactment of the Taxi By-law, the City collected similar fees from Class Members.

30. The fees are a tax. These fees are enforceable by law, imposed under the authority of the Act, levied by a public body, and intended for a public purpose. Furthermore, there is no nexus between the fees and the cost of providing services or programs to Class Members. There is no reasonable connection between the fees charged and any services provided by City to Class Members.

31. The City does not have the authority to impose a tax on Class Members in this manner. Accordingly, the fees are *ultra vires*.

Remedies

The Class Members are entitled to declaratory relief

32. The Class Members are entitled to a declaration that the City unlawfully refused to enforce the Taxi By-law and that the Amendments are unlawful and invalid. The issues are real and not theoretical, and the Class Members have a real interest in determining the issues.

32a. The plaintiffs plead and rely on subsection 24(1) of the *Charter of Rights and Freedoms*, section 52 of the *Constitution Act, 1982*, and subsection 47(2) of the *Human Rights Code*.

33. The Class Members are also entitled to a declaration that the fees collected under the Taxi By-law are *ultra vires*. The issue is real and not theoretical, and the Class Members have a real interest in determining the issue.

The Class Members are entitled to damages

34. As a result of the City's negligence, the Class Members have suffered damages. In particular, the Class Members who are Plate Owners have suffered damages through a loss in the value of their Plates and a loss in the income earned from their Plates. The Class Members who are Brokers have suffered damages by a loss in income earned from their business as taxicab brokerages.

35. The Class Members are also entitled to monetary relief at public law for the City's unlawful refusal to enforce the regulatory scheme and the enactment of the unlawful Amendments. In particular:

- a) An award of monetary relief for the unlawful refusal of the City to maintain the integrity of the regulatory scheme is appropriate in light of the unacceptability and indefensibility of the City's decision, the circumstances of that decision, its effects on Class Members, and the public law values that would be furthered by an award of monetary relief.

- b) Declaratory and mandatory remedies are insufficient to compensate Class Members for the unlawful conduct of the City. As a result of the refusal of the City to reasonably enforce the Taxi By-law and the enactment of the Amendments, Class Members have suffered damages.
- c) An award of damages at public law would vindicate public law values, including the principles of proper, fair, pragmatic, and effective administrative decision-making. In particular, an award of damages would vindicate the obligation of municipalities, under section 106 of the Act, not to grant bonuses.

35a. The Class Members are also entitled to damages under subsection 24(1) of the *Charter of Rights and Freedoms* and section 46.1 of the *Human Rights Code*. In particular:

- d) The Class Members' rights under section 15 of the *Charter* and Part I of the *Human Rights Code* have been breached or infringed.
- e) An award of damages would be just and appropriate and would fulfil the functions of compensation, vindication of the Class Members' rights, and deterrence of future breaches.

The Class Members are entitled to restitution of illegal taxes

36. The taxes collected pursuant to the Taxi By-law are *ultra vires*. Accordingly, the Class Members are entitled to restitution for the taxes they paid under the Taxi By-law.

37. The plaintiffs propose that this action be tried in Ottawa.

Date: ~~February 7, 2017~~

Issued: 12 August, 2016

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Plaintiffs

and THE CITY OF OTTAWA
Defendant

Court File No: 16-69601

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

AMENDED AMENDED STATEMENT OF CLAIM

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Box 97

AMENDED THIS 15 DAY / JOUR
MODIFIÉE DE May 17
OF / DE May 20 17
Pursuant to Rule 26.02(6)
CONFORMÉMENT À LA RÈGLE
OR ORDER
OU À L'ORDONNANCE
DATED THIS / FAIT CE
DAY / JOUR OF / DE 20.....
REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE