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CLIENT BULLETIN

TAXI WAR: WHEN MUNICIPALITIES CAN FRUSTRATE PROVINCIAL AIMS

In recent years, suburban taxis companies have made repeated efforts to obtain operating permits to allow them to meet the significant demand for passenger transportation in Vancouver's entertainment district during peak hours. These efforts have led to several recent court decisions, which provide some illustrative commentary on overlapping jurisdiction and operational conflict between local bylaws and provincial law.

The Passenger Transportation Board is a provincial body established under the *Passenger Transportation Act*, S.B.C. 2004 c. 39. Among its functions is the granting of licences and authorizations for the operations of "passenger directed vehicles", a defined term that includes taxicabs. In order to operate a vehicle as a taxicab, a person must apply to the Board for a licence that includes what is referred to in the Act as a "special authorization", which sets out the particular services that the taxi operator is allowed to provide.

Section 317(1)(l) and (m) of the *Vancouver Charter*, S.B.C. 1953, c. 55, allows the City to regulate chauffeurs and other drivers of vehicles used by carriers on a street in connection with their business, as well as the number of vehicles with respect to which persons may be licensed in any class of carriers. Under the authority of those provisions, Vancouver City Council has enacted provisions of the city's "*Vehicles for Hire Bylaw no. 6066*", which among other things, limits the number of taxi licences available in Vancouver at any given time (currently the limit is 588).

In 2012, the Passenger Transportation Board held a hearing on applications for taxi licences for weekend operations in downtown Vancouver. It granted licences to both Vancouver-based taxi companies and suburban taxi companies. The granting of licences to the suburban companies represented a departure from past practice, which confined taxi companies to trips originating in their own municipalities. The Vancouver taxi companies sought a reconsideration by the Board, which was denied. They then sought judicial review, which application was dismissed. On appeal, reported as *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329, the Vancouver companies argued that the Board erred in not deferring to the City of Vancouver in licencing taxis, on the basis that the Board could not authorize suburban taxi companies to operate in the City without knowing that Vancouver would amend its bylaws to increase the number of taxi licences in the City and thereby allow the Board's decision to be implemented. At the time of the decision, 588 licences had already been issued to Vancouver companies and none further were available under the Vehicles for Hire Bylaw.

Mr. Justice Groberman, writing for the Court of Appeal, found that the Passenger Transportation Board and the City of Vancouver have, to some degree, overlapping jurisdiction in the licencing of taxis. In order to operate a taxi within the City, a person must comply with both the *Passenger Transportation Act*, and the *Vehicles for Hire By-law*. The Court noted that this is not an unusual situation; many areas that may be regulated under municipal bylaws are also regulated by provincial or federal statutes. Where that is the case, both can subsist (assuming they were lawfully enacted), and will have force unless there is an actual conflict in operation between them. An actual operational conflict will only exist where it is impossible to comply with both the statute and the bylaw, such as where a bylaw prohibits activities that a statute requires.

In the case of taxi licencing in Vancouver, a person must have both a licence issued by the Passenger Transportation Board and a taxi licence issued by the City of Vancouver. Unless the City amended its Bylaw, the new licences issued by the Board would be of no value. The Court found, however, that this did not amount to an operational conflict between the Bylaw and the Board's decision.

Mr. Justice Groberman confirmed that a municipality, acting within its jurisdiction, may, in some instances, be able to frustrate the intentions of a provincially-constituted body, also acting within its jurisdiction, and that such a situation does not raise issues of jurisdiction, where both the provincially-constituted body and the municipality may exercise their authority and neither is compelled to conform to the will of the other. The Court found that nothing in the *Passenger Transportation Act* required the Board to predict what legislative actions the City of Vancouver might take, and that the Board is required to make its own licencing decisions based on statutory criteria; it cannot either defer to or delegate its functions to the City of Vancouver.

The Court rejected the appeal, finding that, as subordinate authorities whose powers derive from Provincial statutes, neither the City nor the Board are required to defer to the other, and both are required to operate as independent authorities within their statutory spheres. Mere differences in the ways that two competent bodies choose to regulate a field will not require a court to find one or the other to have paramount or dominant authority.

In fact, the City did not amend its Bylaw to increase the number of available licences and in 2015, the suburban tax companies brought a petition seeking a declaration that the Bylaw was void, voidable or otherwise unenforceable; an order that City of Vancouver staff process all applications submitted by the suburban companies to obtain permits to operate in Vancouver during peak hours; and an order requiring the City of Vancouver staff to amend the Bylaw to increase the maximum number of taxi licenses.

In the decision, *Delta Sunshine Taxi (1972) Ltd. v. City of Vancouver*, 2015 BCSC 357, Kelleher J. of the BC Supreme Court referred to the Court of Appeal's reasons in *Yellow Cab Company* in confirming that both the Board and the City have licencing power, and neither is required to defer to the other. He then went on to consider whether the Bylaw was *ultra vires* the City.

Municipalities are creatures of statute and can only act within the powers conferred upon them by the provincial legislature. The authority of the City to make by-laws with respect to taxi cabs is set out in the *Vancouver Charter*. The Court found that there was no indication in the *Passenger*

Transportation Act that the legislature intended that the Board's general authority to grant applications supersedes the specific authority of the City to limit the number of taxis that operate in Vancouver. Where the legislature had such an intent, it was stated expressly in the *Charter*; for example, s. 317(1)(j) of the *Charter* subjects the City Bylaw's requirements for maximum and minimum fare rates to those set by the Board.

The Court wrote that in Canada, a broad, purposive approach has been taken to the interpretation of municipal powers. In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, (2004) SCC 19, the Court described the analytical approach to construing City powers as follows:

The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. This notable shift in the nature of municipalities was acknowledged by McLachlan J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 SCR 231, at pp. 244-45. 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: *Nanaimo, supra*, at para. 18. 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 and in particular subject areas, choosing instead to confer them broad authority over generally defined matters: [citations omitted]. This shift in legislative drafting reflects the true nature of modern instabilities which require greater flexibility in fulfilling their statutory purposes. *Shell Canada* at pp. 238 to 245.

On this basis, the Court concluded that the *Vancouver Charter* authorized the City to pass bylaws with respect to the number of taxis to be licensed in the City, and that the Bylaw was not *ultra vires*.

These decisions are instructive in defining the scope which municipalities possess to make decisions which potentially frustrate those of provincial bodies. It seems that where not expressly restricted by the terms of provincial enabling legislation, such *de facto* conflicts will generally not result in the municipal decision being overturned.

Elizabeth Anderson