

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

Cv-23-00710729-0000

BETWEEN:

UBER CANADA INC. and
UBER RASIER CANADA INC.

Applicants

- and -

CITY OF TORONTO

Respondent



NOTICE OF APPLICATION

Application under rules 14.05(2) and 14.05(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and section 214 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing in person

- In person
 By telephone conference
 By video conference

at the following location

Superior Court of Justice
330 University Avenue
Toronto, ON
M5G 1R7

on a date to be set by the Court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where

the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 4, 2023

Issued by



Local registrar

Address of court office 330 University Avenue, 7th
Floor
Toronto, ON M5G 1R7

TO: City of Toronto
City Hall
100 Queen St. W.
5th Floor, East Tower
Toronto, ON M5H 2N2

APPLICATION

1. Uber Canada Inc. and Uber Rasio Canada Inc. (together, “**Uber**”) apply for:
 - (a) an order quashing the sections of City of Toronto By-law No. 890-2023 and By-law No. 989-2023 that implement a cap on private transportation company (“**PTC**”) driver licences (the “**Licence Cap**”) for illegality under section 214(1) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A because:
 - (i) the City failed to provide **notice** of the Licence Cap contrary to Chapter 27 of the City of Toronto Municipal Code (the “**Municipal Code**”) and the *City of Toronto Act, 2006*, depriving the public and stakeholders, including Uber, of an open and transparent process and the opportunity for public debate;
 - (ii) the City enacted the Licence Cap in **bad faith**, in a process tainted with bias and influence of special interests;
 - (iii) the Licence Cap unlawfully **discriminates** in the administration of Toronto’s PTC licensing scheme;
 - (b) an order pursuant to section 214(3) of the *City of Toronto Act, 2006* directing that nothing be done under the Licence Cap until this application is disposed of;
 - (c) costs of this application; and
 - (d) such further and other relief as counsel to the Applicants may request and this Court may deem just.
2. The grounds for the application are:

Background

- (a) Chapter 546 of the Municipal Code, “Licensing of Vehicles-for-Hire”, governs the relevant municipal licensing regime;
- (b) Uber is a private transportation company (“PTC”) as defined in § 546-1 of the Municipal Code;
- (c) PTC drivers, also as defined in § 546-1 of the Municipal Code, are drivers of private vehicles-for-hire and required to be licensed under Chapter 546;
- (d) Under § 546-112(D), “an application for a PTC driver's licence shall be made through the PTC with which the individual seeking to be a PTC driver is to be affiliated”;
- (e) Uber enables a digital marketplace that facilitates connections between PTC drivers and riders looking for ridesharing services.
- (f) Uber earns money from PTC drivers who use Uber’s digital marketplace. Those PTC drivers pay fees to Uber in exchange for lead-generation and related services that Uber provides. Fees are calculated as a function of the trips that riders agree to take with PTC drivers;
- (g) Before October 11, 2023, any applicant who satisfied the City’s safety requirements and completed a City-accredited training course was issued a PTC driver licence;
- (h) At the October 11, 2023 meeting of Toronto City Council, the City introduced and passed the Licence Cap via a surprise motion—with no notice to the public, Uber or other impacted stakeholders;
- (i) Prior to November 10, 2023, Uber did not know how the City would operationalize the Licence Cap, depriving Uber of the information it needed to determine the impact of the Licence Cap.

- (j) On November 14, 2023, the City finally began the process to implement the Licence Cap, and began licensing a limited number of PTC drivers;

The City Failed to Provide Notice

- (k) Under its own procedures, the City was required to provide advance public notice of the Licence Cap;
- (l) The City chose to ignore its own procedures and adopted the Licence Cap by ambush, without notice to Uber, other stakeholders or the public;
- (m) The City did not disclose its plans in the agenda for the October 11, 2023 meeting of Council; further, the City did not go through the Committee process as required by Chapter 27 of the Municipal Code;
- (n) In December of 2021, Council directed City staff to report on recommended updates to the City's by-laws for the vehicle-for-hire industry, for the purpose of achieving vehicle electrification and emissions reductions targets;
- (o) No mention of a cap on PTC driver licences was made in Council's direction to City staff;
- (p) On September 11, 2023, City staff delivered a report to the Economic and Community Development Committee (the "ECDC") (the "**ECDC Report**"), which was considered by the ECDC at a meeting on September 21, 2023.
- (q) The ECDC Report was the product of months of work and consultation with the public and industry stakeholders, including Uber. The ECDC Report made no mention of capping PTC driver licences;
- (r) At its meeting on September 21, 2023, the ECDC recommended that Council adopt specific changes to Chapter 546 of the Municipal Code to

transition vehicles for hire to zero-emission vehicles (“ZEVs”) at Council’s October 11, 2023 meeting;

- (s) The recommendations made no mention of capping PTC driver licences;
- (t) At the October 11, 2023 Council meeting, despite a complete absence of prior notice or public consultation, Councillor Mike Colle moved that Council implement a new policy “to maintain the net total of vehicle-for-hire and private transportation company driver’s licences at no greater than current levels, as of October 12, 2023...”;
- (u) Council amended Councillor Colle’s motion further to create a carve-out from the Licence Cap for “owned, but not leased” ZEVs, without any explanation for that arbitrary distinction;
- (v) Council knew or should have known that the Licence Cap was illegal;
- (w) Councillor Robinson noted:

I felt like for most of this afternoon I was at the wrong meeting because *I thought this was about the environment, and it’s been mostly about capping*. [Emphasis added].

- (x) Councillor Bradford noted:

The discussion today has largely been hijacked [by discussion] about a freeze and a cap and for everyone who’s watching this at home...you have to ask the question. Why were we all talking about caps and freezes before Councillor Colle’s motion even got put on the floor? And that’s because that is the pressure...from various interested parties to have that discussion today *on a report that is actually completely unrelated to that* and astute observers would ask the question – why? [Emphasis added].

- (y) Councillor Saxe asked, “Do the companies involved know that that we’re considering a cap?” to which the City’s Executive Director of Municipal Licensing & Standards, replied:

Not to my knowledge.

...

All I can say generically is that notice is, is typically required. Not giving notice opens us up to risk.

- (z) A majority of Council, led by the Mayor, chose to proceed, and Councillor Colle's motion carried at the October 11, 2023 meeting;
- (aa) Uber has recently learned that the Mayor and a group of councillors had planned to introduce the Licence Cap months before the October 11, 2023 meeting;
- (bb) Internal City documents disclosed on November 15, 2023 in response to a freedom of information request, reveal that:
 - (i) as early as August 2023, the Mayor's office was planning to bring a motion to implement the Licence Cap at a September 2023 Council meeting because she "long held the belief that the city should put a cap (moratorium) on giving out Uber licenses;"
 - (ii) the Mayor's office prepared a motion nearly identical to the motion introduced by Councillor Colle; and
 - (iii) the Mayor's speaking notes, written more than a week in advance of the October 11, 2023 Council meeting, and a day prior to the publication of the meeting agenda, expressed support for "the amendment by Councillor Colle to introduce a cap on net new vehicle for hire and private transportation companies;"
- (cc) The Licence Cap is a significant legislative step that radically changes the licensing scheme set out in Chapter 546 of the Municipal Code;
- (dd) Neither the Licence Cap nor its subject matter was properly before Council;
- (ee) The City was required to give public notice of the Licence Cap pursuant to § 27-7.2 of the Municipal Code;

- (ff) The City did not;
- (gg) Instead, the City chose to deprive the public and stakeholders, including Uber, of the opportunity to debate and analyze the Licence Cap in an open and transparent public process;

The Mayor and Council Were Biased and Acted in Bad Faith

- (hh) Council acted in bad faith by concealing its plans to introduce a Licence Cap and disguising it as a supposed amendment to a prior motion;
- (ii) Council circumvented the public participation process and avoided consultation with the most directly affected stakeholders in a manner that demonstrates a lack of candour, frankness, and impartiality;
- (jj) The City knew of the need to consult with the public and with industry stakeholders about changes to PTC driver licensing, including because it engaged in extensive consultation with those stakeholders about the ZEV transition for over one year leading up to the October 11, 2023 meeting;
- (kk) But when it came to the Licence Cap, which constitutes the most drastic change to the scheme implemented at the October 11 meeting, the City kept the public and stakeholders in the dark;
- (ll) The Mayor's comments at Council highlighted the deliberate subterfuge of Councillor Colle's motion:

But there are some things you don't give notification, whether it's income tax or...when you want to cap something, you need to do it immediately. You know why? If not, everybody will rush out and get all the licenses, and then you might as well not have a moratorium.

- (mm) The City also acted with bias against Uber;
- (nn) The internal City documents produced in response to the freedom of information request reveal that:

- (i) the Licence Cap was intended as a targeted policy aimed at halting Uber's growth in Toronto;
 - (ii) the City implemented the Licence Cap for the improper purpose of restricting the number of PTC driver licences specifically affiliated with Uber;
 - (iii) a special interest group called RideFairTO, which has long displayed an animus towards Uber, was a driving force behind the Mayor's plan to spring the Licence Cap at Council;
 - (iv) a co-founder of RideFairTO, who was simultaneously coordinating policy in the Mayor's office, remained in constant contact with his RideFairTO colleagues; and
 - (v) the Mayor and the RideFairTO co-founder used their private email addresses, rather than "@toronto.ca" City email accounts, when hatching their plan for the Licence Cap;
- (oo) As of October 11, 2023, the Mayor's head of policy was registered as an active lobbyist for RideFairTO, and was not walled-off from participating in PTC-related policy in the Mayor's office.

The Licence Cap Discriminates Without a Rational Basis

- (pp) The Licence Cap is a discriminatory application of the licensing scheme in Chapter 546 of the Municipal Code;
- (qq) The Licence Cap discriminates between prospective and existing vehicle-for-hire licensees;
- (rr) The Licence Cap discriminates between PTC drivers who own a vehicle, and those who rent or lease a vehicle (or are otherwise not listed on the vehicle registration document);

- (ss) The City lacked a rational basis for taking such discriminatory action;
- (tt) The City failed to establish such a rational basis through a due diligence review of policy options;
- (uu) The City failed to give any consideration to alternative means by which the purported objective(s) of the Licence Cap could be achieved;

The Licence Cap Should be Stayed Pending the Disposition of this Application

- (vv) The application raises a serious issue to be determined;
- (ww) Uber will be irreparably harmed if the Licence Cap is not stayed pending the determination of the application:
 - (i) The Licence Cap will limit PTC driver licences for drivers who choose to use Uber's platform;
 - (ii) The Licence Cap will lead to longer wait times and degraded service for riders, which will cause riders to stop using Uber's platform;
 - (iii) Uber will lose its customer base, goodwill and revenues;
 - (iv) Uber will suffer harm that is not recoverable in damages; and
 - (v) Further, damages are not available on an application to quash an illegal by-law;
- (xx) The balance of convenience favours a stay:
 - (i) Maintaining the status quo will cause no harm to City, which is still able to pursue its objective of achieving a zero-emission transition for vehicles-for-hire by adopting the recommendations of the ECDC that were subject to public and industry comment and thorough debate;

- (ii) The public makes frequent use of Uber's services;
- (iii) The City of Toronto—being an incorporation of its residents—is best served by public notice, transparency, and informed debate about important policy initiatives that impact consumer protection, business licensing, and the economic, social and environmental well-being of the City;
- (iv) Prospective rideshare drivers are currently being denied the opportunity to earn income in the City of Toronto after investing time and resources to meet the regulatory requirements of Chapter 546, including taking City-mandated driver training;
- (v) The Licence Cap will increase “dead-heading” by drivers who drop off riders in Toronto but do not have the PTC driver licence required to pick up subsequent riders within Toronto;
- (vi) Riders in “transit deserts” will be deprived of a convenient, reliable, affordable transportation option;
- (vii) The lesser availability of rideshare vehicles will increase instances of impaired driving.

3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit evidence in support of the application, to be sworn, together with the exhibits attached thereto;
 - (b) Such further and other evidence as counsel to the Applicants may request and this Court may deem just.

December 4, 2023

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Applicants and Respondent

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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