



Metro Taxi v. City of Ottawa

2024 ONSC 2725

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What is the class action about?

The class action seeks compensation for the losses that the plate owners and brokers suffered as a result of the City's conduct after the illegal entry of Uber in 2014.

The plaintiffs are seeking damages of **\$215,000,000**.

What is the class action about?

The class action alleged the following:

1. Negligence

The City negligently enforced the former Taxi By-law.

2. Unlawful by-law

The 2016 By-law was unreasonable and unlawful under the *Municipal Act*

3. Discrimination

In failing to enforce its Taxi By-law and in changing the Taxi By-law, the City discriminated on the basis of race and ethnic origin, contrary to the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code*.

4. Illegal Taxes

The City charged taxi plate owners and brokers illegal taxes under the Taxi By-laws.

Who are the plaintiff classes?

Plate Owners: All persons who were Taxi Plate Owners under the Ottawa Taxi By-law on September 1, 2014 or who became Taxi Plate Owners between September 1, 2014 and September 30, 2016

Brokers: All persons who were Taxi Brokers under the Ottawa Taxi By-law on September 1, 2014 or who became a Taxi Broker between September 1, 2014 and September 30, 2016




Media Comments

Bruce Feldthusen, Professor of Law at University of Ottawa:

“My initial feeling was that such an action would not and should not succeed. I decided to look into the matter more closely. **I still predict that the Uber action is more likely to fail**, even to be dismissed on a preliminary motion, than not.” 2017

“I don’t think there’s ever been a successful case just like this – which is not to say there couldn’t be, but I don’t think there’s been one yet....**There’s a very good law firm, very good lawyers, that are working on this and presuming they’re not doing it for the fun of it, so I wouldn’t discount it entirely**”, 2016.

How did we get here?



| | | |
|------|-----------|--|
| 2012 | | Uber begins illegal operations in Toronto |
| 2014 | October | Uber begins illegal operations in Ottawa |
| 2015 | January | Ottawa initiates fast-track review of Taxi by-law |
| 2016 | April | Ottawa votes to legalize Uber with 2016 By-law |
| | August | Ottawa Plaintiffs commence class action |
| | September | New Ottawa By-law takes effect |
| 2017 | | Unifor brings challenge to Ottawa by-law |
| 2018 | January | Ottawa class action certified |
| | May | Ottawa court dismisses Unifor challenge to Ottawa by-law |
| | July | Toronto plaintiffs launch class action ("Eisenberg v Toronto") |
| 2019 | December | Toronto class action dismissed |
| 2023 | | Ottawa Class action trial |
| 2024 | May | Ottawa Class action judgment: finds Ottawa negligent |

Failed Litigation

Unifor v Ottawa, 2018 ONSC 3377

- Applicants sought to quash the 2016 Ottawa Vehicle-for-Hire Law as illegal.
- Superior Court dismissed the challenge and upheld the by-law.
- In Ottawa class action, parties agreed to dismiss the by-law challenge in light of the *Unifor* decision.

Eisenberg v City of Toronto, 2019 ONSC 7312

- Superior Court dismisses Toronto class action alleging negligent enforcement against Uber and negligent amendment of by-law: **Toronto owes no duty of care to plate owners**
- Appeal dismissed: 2021 ONSC 2776

Ottawa trial (2023)

- 7 weeks
- 17 witnesses (2 experts)
- 200 trial exhibits
- 600+ pages of closing legal argument

Ottawa Trial Decision

In his decision, Justice Marc Smith held as follows:

(a) The City was negligent in enforcing the 2012 By-law from September 1, 2014 to September 30, 2016.

(b) The City's conduct in allegedly negligently enforcing the 2012 By-law or in amending the taxi by-law in 2016 **did not** infringe on the rights of the taxi plate holders under s. 15 of the *Charter* or under s. 3 of the *Human Rights Code*.

(c) The fees collected by the City under its taxi by-law **do not** constitute an unlawful tax.

Negligence: Duty of Care

- In the Toronto class action (*Eisenberg*), the Court found that Toronto did not owe a duty of care toward the class.
- In Ottawa, a duty of care was found. How?

Duty of Care: A deep dive into Ottawa taxi history



Photo of Capital Taxi Office, circa 1930s

The City and the Plaintiffs had a “unique” “decades-long close and direct relationship” “unlike those seen in other cases such as *Eisenberg*”

“The historical context and collaboration between the City and the Plaintiffs are exceptional and evince a rigorous partnership in the context of enforcement.”

“The evidence demonstrates a close collaboration between the parties, one which I would qualify as a partnership or joint venture, created for the purpose of combating unlicensed taxicab operators.”

“Because of this proximity, I find that the City had a duty of care to enforce the 2012 By-law.” [paras 98, 139-142]

Key Findings

“This is not a case where the Ottawa taxi industry wanted to restrict competition. Rather, the taxi industry stakeholders were only seeking that it be fair competition. Uber’s *modus operandi* was well known to the City regulators. Uber bullied its way into the Ottawa market, and for two years, ignored regulations and operated freely and illegally, without any serious restrictions. Despite forewarning that Uber’s bullying tactic would be applied in Ottawa, the City was ill-prepared and negligent, with detrimental results for the taxi industry.” (para 18)

Key Findings – Uber as bandit taxi company

“Uber was a bandit taxicab company, and the City knew, by experience, that failure to enforce against a bandit company would have a devastating impact on the licensed taxi industry.”
(para 114)

Key Findings – the City and Plate Value

“Even if the City did not control the secondary market, nor was it involved in trading the assets, I believe that **the City was nonetheless a willing participant in the secondary market**. In the circumstances of this case, and given the City’s conduct, I am of the view it would be unconscionable to negate the City’s duty of care.” (para 181)

Key Findings – Ineffective Enforcement

“Defeat is almost assured when one believes that defeat is inevitable. There are examples where Uber was defeated, and these are not just limited to geographic areas where the taxi industry was regulated by the province (i.e., the City of Calgary).

I am not persuaded by the City’s arguments. The City had options to stop Uber but chose not to exercise them. With proper planning and an effective enforcement strategy, I am of the view that the City could have stopped Uber from invading the Ottawa market as it did in September 2014.” (para 238)



Ottawa - Next Steps

Issue of damages yet to be decided.

Phase #2 of the trial will consider whether damages assessed in the aggregate is an appropriate remedy.

Takeaways

First successful legal challenge regarding by-law enforcement against Uber in Canada

For Duty of Care, History Matters - The historical context of regulatory relationship makes a difference. Each jurisdiction is different!

Is the narrative changing? Uber Files, Toronto review, this trial judgment

Future court cases: Hurdles

- *Jurisdictions that have tried and failed/desisted*
- *Limitation Periods*
 - **Two-year** basic limitation period for commencing a legal proceeding, subject to discoverability (see *Limitations Act*, s. 4).
 - **One-year** time limit to quash by-law after passage (see *Municipal Act*, s. 273 and *City of Toronto Act*, s. 214)

Looking to the Future

- Is Uber entering your jurisdiction?
- Is your jurisdiction considering legalizing Uber?
- Is your jurisdiction reviewing its By-laws?
- Does your jurisdiction regulate Uber and taxicabs differently?