

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN :

TORONTO TAXI ALLIANCE INC.

Applicant

- and -

CITY OF TORONTO

Respondent

**FACTUM  
OF THE MOVING PARTY/APPLICANT,  
TORONTO TAXI ALLIANCE INC.  
(Motion returnable June 25, 2014)**

June 16, 2014

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**PART I - OVERVIEW:**

1. The Toronto Taxi Association Inc. (“TTA”) seeks an interim injunction restraining the City of Toronto from implementing and enforcing recently adopted by-laws in respect of the City’s taxicab licensing regime – which by-laws are yet to be numbered, but adopted by Toronto City Council on June 13, 2014 in Bills 542 and 543 – pending the final disposition of the TTA’s application to quash those by-laws as well as an earlier confirmatory by-law no. 145-2014 all in respect of Toronto City Council item no. LS26.01 (the “Application to Quash”), which on consent is scheduled to be heard on November 17 to 19, 2014.

2. In contravention of the procedural by-law that the *City of Toronto Act, 2006* legislated the City to adopt and respect, City Council (“Council”) wrongfully passed resolutions to amend its taxicab licensing regime at its February 19, 2014 meeting. Specifically, Council adopted resolutions that were not properly before it and which were brought with no notice to the public as required under the procedural by-law. In the face of questions of the propriety of adopting resolutions in such circumstances, some councillors acknowledged that legal proceedings would likely be brought and simply passed the resolutions that radically overhauled the taxicab licensing regime (the “Taxicab Licensing Revisions”).

3. On June 13, 2014, once again without the adequate notice required under the procedural by-law, and despite the fact that the herein application had been brought complaining of the lack of procedural fairness, Council adopted bills proposing by-laws encompassing the February 19, 2014 resolutions a mere 17 days before they were to come into effect, namely Bills 542 and 543 amending Chapter 545 of the *Toronto Municipal Code* (the “Amended By-Law”).

4. The Taxicab Licensing Revisions have had and will have a negative impact on many industry participants and especially on the holders of the current class of taxicab licence known as the Standard Taxicab Licence (“STL”). The STL is the oldest form of licence, and confers upon its holders important and valuable rights and privileges, such as the right to lease the STL and sell (transfer) the STL on the open market. The market value of the new TTL will be substantially less than that of a STL. In 2012, before any taxicab licensing reforms were drafted, the average STL licence sold for approximately as high as \$350,000.

5. The Application to Quash challenges the adoption of the entirety of the Taxicab Licensing Revisions. Of particular concern is Council’s last-minute decision adopted contrary to its own procedural by-law to commence the implementation of the TTL regime on July 1, 2014.

6. Under the Amended By-Law, any old STL taxicab licences that are sold or transferred will be automatically converted into new TTL licences. The market value of the new TTL will be substantially less than that of an STL. Reasons for the lower value of a TTL are that all TTL taxicabs must be wheelchair accessible, which is not a current requirement of STL taxicabs, and that all TTL holders must actually operate the taxicab themselves and may not lease their taxicabs.

7. The following groups of individuals will be irreparably harmed if an interim injunction is not granted and the TTL regime is implemented before the Application to Quash is heard in November 2014, a dated agreeable to the City:

- 1) Current STL taxicab owners that are obligated by the *Toronto Municipal Code Chapter 545* (the “Code”) to sell or transfer their licence before the Application to Quash will be disposed of. For example, under s. 142B(3) of that section of the *Code*,

the estate of a deceased owner of an STL taxicab whose licence will terminate one year from the date of death of the deceased owner unless sold or transferred prior to that date;

2) Any owner of an STL taxicab that sells it after July 1, 2014 and before the Application to Quash can be disposed of for a reduced market value; and

3) Lessees, drivers and operators of leased STL taxicabs that will suffer loss of employment and other income when STL taxicabs are converted into TTL taxicabs because TTLs cannot be leased.

8. The economic harm to these individuals is irreparable. If the Application to Quash is granted, there is no one to repay vendors of STLs that were converted into TTLs for a reduced price. Similarly, the purchaser of an STL taxicab after July 1, 2014 who is issued a TTL (for a \$5,000 fee payable to the City, that is), is required to purchase a wheelchair accessible taxicab. If the Application to Quash is successful and the Amended By-Law is set aside, then there will be no one to compensate the purchaser for the money spent on the conversion to wheelchair accessibility. Similarly, lessees and agents who leased STL taxicabs will likely have no one from whom lost income due to the conversion of the STL to a TTL can be recovered.

9. The balance of convenience favours a stay for several reasons.

10. First, the very notion of a TTL was not properly before Council at its February 19, 2014 meeting because the City's Municipal and Licensing Committee ("Committee") had previously decided not to make recommendations to Council with respect to the creation of a TTL. At a Committee meeting held prior to the Council meeting in question, the Committee

had decided to refer back to staff their recommendations regarding the TTL for a further staff report due in February 2015. Instead of waiting for the Committee-ordered staff report, Council nevertheless imposed a start date for the TTL of four-and-a-half months later on July 1, 2014. Even though a further staff report had been ordered by the Committee, staff had within its initial report recommended a start date for the TTL of January 1, 2019. The rationale for this recommendation was to permit time for the industry to adjust and realign itself in response to such a drastic change. Council blatantly ignores not only the Committee's decision, but also the reasoning of City Staff on the proposed start dates for the TTL.

11. This action was without any consultation or notice to the public or interested stakeholders before its meeting. Not only was approving this part of the resolution a flagrant violation of its own procedural by-law, it also offended the City's obligation to adhere to principles of procedural fairness and to act in good faith.

12. Second, if an injunction is not granted, STL holders will suffer prejudice because they will have less than two weeks from today's date to decide what to do with their licence (*i.e.*, sell it immediately as an STL, or sell it later as a TTL to a much limited pool of owner/operators at a lower price). Council has acted unfairly by not providing STL holders adequate time to make an informed decision with the benefit of time to weigh their options and to consider how the market will react to the TTL.

13. Not only did Council approve on February 9, 2014 a resolution without notice, the very bills implementing the resolutions adopted were only adopted by Council on June 13, 2014 – again with neither notice of the fact that bills were being introduced (they were deposited mid-meeting) nor the contents thereof provided to the public (there was no mention of the bills in the meeting agenda).

14. Third, not granting a stay will result in inconvenience and disruption to the entire taxi industry if the Applicants are successful in quashing the Amended By-Law. In that case, the City will have changed and then reverted back to the current licensing regime, resulting in significant confusion, disruption and financial loss, not to mention the disarray in the market for taxicab licences. No reason has ever been provided as to why Council breached its own procedural rules for urgent implementation of the Amended By-Law.

15. Finally, the stay will not be for a long period of time, and no harm will result in maintaining the status quo. There is no pressing reason why the Amended By-Law must be effective starting July 1, 2014 especially given the fact that the City has agreed to have the Application to Quash heard on November 17-19, 2014. The City has on several occasions refused to delay the implementation date on consent to an interim injunction and refuses to advise why it is taking such a position.

## **PART II - FACTS**

### **A. Toronto's Taxicab Industry**

16. There are presently three forms of taxicab owner licences in Toronto: Standard Taxicab Owner Licences ("STL"), Ambassador Taxicab Owner Licences ("Ambassador"), and Accessible Taxicab Owner Licences ("Accessible").

Affidavit of Joel Barr, Tab 2 of Applicant's Application Record ("AR"), at p. 22, para. 5.

17. There are two key elements that differentiate the STL from the Ambassador and Accessible Licences: **transferability and leasing**.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 160.



18. Since at least 1963, the City permitted holders of STLs to sell them at market value. All sales agreements must be approved by the City. A transfer fee of approximately \$5,000 is paid to the City upon the sale of and transfer of the STL to a new taxicab owner.

Affidavit of Joel Barr, Tab 2 of AR, at p. 22, para. 6.

19. Since 2005, the transferee must also be licensed as a Toronto taxicab driver and can hold only one STL. However, the STL holder is not required to actually drive the taxicab; it can be leased or rented to another taxicab driver. The holder of an STL acquired prior to 2005 does not have to be a taxicab driver.

Affidavit of Joel Barr, Tab 2 of AR, at p. 22, para. 8.

20. Most licensed taxicab drivers rent STL taxicabs from holders of STLs or “Agents” (individuals that enter into agreements with STL owners to manage the operation and leasing of the taxicab). Others lease taxicabs from licensed owners (“Lessees”) or their Agents on a longer term basis pursuant to a written lease pursuant to the Code. The City is aware that these leases provide a source of income for STL holders, Agents, and Lessees. The average monthly income generated for an owner through leasing an STL is \$1,350.

Affidavit of Joel Barr, Tab 2 of AR, at p. 22, para. 7.

Affidavit of Joel Barr; Exhibit M: Summary of City Council Meeting, Tab 2M of AR at p. 351, at 113:00).

21. The City of Toronto stopped issuing STLs in 1999. Instead, it created a new restricted class of licence called the Ambassador taxicab licence. Ambassador taxicabs owners have a different set of rights than STL taxicab owners. Most notably, Ambassador taxicabs owners

must actually drive the taxicab full-time (36 hours a week). Furthermore, and unlike STL holders, Ambassador taxicab licence holders may not lease, transfer, sell, or rent the taxicab. There are presently 1,313 Ambassador taxicab licence holders operating in the City of Toronto. Since the commencement of the Ambassador taxicab licence, the City continued to recognize the existing STL with its associated rights and privileges.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, pp. 158-159.

**B. The STL has market value**

22. The City continued to recognize the STL because there are a limited number of them, they have accrued in value and that a market exists for the sale of STL licences. The fact that no new STLs have been issued since 1999 has only served to increase the market value of STLs, which individuals have purchased.

Affidavit of Joel Barr; Exhibit M: Summary of City Council Meeting, Tab 2M of AR at p. 353, at 131:23.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 160.

23. In 2012, the average reported sale price for an STL was approximately \$228,000. In 2013, amidst looming reforms to the industry, the average reported price dropped to \$158,500. The average reported sale price including nominal-value transfers in 2014 (as of April 22, 2014) has dropped further to \$109,466.<sup>1</sup>

Expert Report of D. Stacey, Tab 6A of Applicant's Motion Record ("MR"), at pp. 94-97.

Affidavit of Iryna Dubinets, Exhibit D: City of Toronto Response to Request for Information, Tab 5D of MR, p. 89.

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<sup>1</sup> It should be noted that the average reported sale price as calculated by the City of Toronto for all years takes into account all sales of STLs, including sales between family members that are often for what is presumed to be nominal value (i.e. less than \$10). When nominal value transactions are excluded, the average sale price in 2012 was \$251,662 and in 2013 it was \$176,875. (see Expert Report of D. Stacey, Tab 6A, of MR at p.96).

24. STL holders treat their licences as an asset and a source of income. Many holders worked for decades as taxicab drivers and had to wait for years on a City waiting list to be issued an STL of their own. Over the years, the City encouraged drivers to apply and pay for STLs so that they could derive retirement income, and thus security in old age, from leasing their STLs. The improperly adopted TTL reforms put that class of STL holder into serious peril, which was in effect similar to expropriation without compensation.

Affidavit of Margaret F. Gillard, Tab 2 of MR, pp. 8-10, paras. 4-10.

Affidavit of Shirley Schneider, Tab 3 of MR, pp. 13-14, paras. 2-10.

Affidavit of Hy Rotkop, Tab 4 of MR, pp. 19-20, paras. 2-8.

Affidavit of Joel Barr, Exhibit N: email of Mudassar Muto, Tab 2N of AR, p. 366.

25. It is no secret that many STL holders require the income from leasing their STL in order to meet living expenses or have been counting on the funds to be generated from the sale of their STL for similar reasons. When an STL holder dies, he or she takes comfort in knowing that the STL will pass to his or her estate for the benefit of beneficiaries.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 160; and Exhibit N: email of Mudassar Muto, Tab 2N of AR, p. 366.

Affidavit of Margaret F. Gillard, Tab 2 of MR, pp. 8-9, paras. 4-5.

Affidavit of Shirley Schneider, Tab 3 of MR, pp. 13-14, paras. 2-7.

Affidavit of Hy Rotkop, Tab 4 of MR, pp. 19-20, paras. 2-8.

### **C. The City of Toronto Proposes Changes to the Taxicab Industry**

26. In 2011, the City of Toronto (“the City”) decided to undertake a comprehensive review of Toronto’s taxicab industry.

Affidavit of Joel Barr, Tab 2 of AR, at p. 21, para. 2.

27. In May 2011, the Committee requested MLS's Executive Director, Tracey Cook ("Ms. Cook") to present the Committee with a review plan for the City's taxicab industry. MLS proposed consultations with various stakeholders to respond to the above request from the Committee.

Affidavit of Joel Barr, Tab 2 of AR, pp. 23-24, paras. 11-12.

28. Over the next two years, the MLS Staff undertook a variety of consultations and drafted and presented reports relating to proposed changes to the taxicab industry to the Committee. On January 8, 2014, MLS completed their final report entitled *The Taxicab Industry Review – Final Report* (the "January 8, 2014 Staff Report"). Attached to the January 8, 2014 Staff Report was the final report requested by the Committee entitled *Toronto's Taxicab Industry Review: Final Report* dated January 2014 (the "Final Report").

Affidavit of Joel Barr, Tab 2 of AR, pp. 24-25, paras. 13-18.

**D. A New Class of Licence: The Toronto Taxicab Licence (TTL)**

29. The January 8, 2014 Staff Report and the Final Report recommended the creation of a new class of taxicab owner's licence – the TTL – whose properties are markedly different from the current STL. The TTL would be subject to the following restrictions and conditions:

- 1) A TTL owner may only hold one TTL, and may not hold any other taxicab owner's licence;
- 2) A TTL owner must own, insure, maintain and be responsible for his or her licensed taxicab vehicle;

- 3) A TTL owner must drive his or her taxicab for a minimum of 167 hours within one calendar month (*i.e.*, 14 x 12-hour shifts in a month);
- 4) A TTL owner must be affiliated with a licensed brokerage;
- 5) A TTL owner may, in addition, rent his or her taxicab, on a shift basis only, to a maximum of three licensed drivers who have passed the city of Toronto approved course;
- 6) A TTL a owner may sell his her taxicab and its equipment after meeting the minimum driving requirement for two consecutive years; the City may issue, at its discretion, the TTL in the name of the qualified purchaser, who must be an individual (no corporations); and
- 7) A TTL requires the operation of a wheelchair accessible vehicle.

Affidavit of Joel Barr, Tab 2 of AR, pp. 25- 27, paras. 19-21

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 190.

30. The chart below, excerpted from page 43 of the Final Report, summarizes the differences in rights conferred on the various Toronto taxicab licence holders, including the

new TTL class of licence.

**Taxicab Owner's Licences**

TAXICAB LICENCE	NUMBER OF LICENCES	24 HOUR OPERATION	OWNER MUST DRIVE	SHIFT RENTAL ALLOWED	LEASING ALLOWED	TRANSFERABILITY (ABILITY TO SELL TAXICAB)
Standard	3,451	✓		✓	✓ (Lessee must drive)	✓
Ambassador	1,313		✓			
Accessible	85	✓	✓	✓		
Toronto Taxicab Licence (TTL)	-	✓	✓	✓		✓

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 189.

**E. The value of the STL is negatively impacted by the implementation of the TTL**

31. As a consequence of the taxicab review plan, the STL has already dropped from an average of \$228,000 in 2012 (even higher before) to \$109,466 as of April 2014. Council's actions in February 2014 have no doubt had a massive downward impact on its value.

Expert Report of D. Stacey, Tab 6A of MR at pp. 94-97;

Affidavit of Iryna Dubinets, Exhibit D: City of Toronto Response to Request for Information, Tab 5D of MR, p. 89.

32. The market value of a TTL will undoubtedly be lower than the market value of an STL primarily for four reasons:

- 1) The TTL is subject to restrictions that increase both its upfront cost and its operating cost and reduce its value. Specifically, TTL taxicabs must be wheelchair accessible. The STL has no such requirement. Converting a regular taxicab into an accessible taxicab is an expensive undertaking costing between \$57,000 and \$66,000;

that undertaking requires the purchase of an entirely different vehicle. Moreover, it will involve much higher insurance costs for the holder of the TTL. These costs reduce the net proceeds that an STL owner will receive from the sale of the licence that must be converted into a TTL.

Expert Report of D. Stacey, Tab 6A of MR at pp. 100-102;

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 179.

2) Because a TTL holder must now actually drive the taxicab, the pool of buyers to whom a TTL can be sold is much smaller than the pool of current buyers for STLs, thus putting further downward pressure on the value of the STLs for sale;

Expert Report of D. Stacey, Tab 6A of MR at pp. 100-102;

3) The market for TTLs will be more saturated than the market for STLs because Ambassador licence owners will also be transitioning their licences to the TTL, resulting in an influx of an additional 1,300 licences; and

Expert Report of D. Stacey, Tab 6A of MR at pp. 100-102.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 159 (there are 1,313 Ambassador licence owners) and p. 199 (Ambassadors can transfer to TTL)

4) Due to restrictions on leasing, the TTL does not offer the income earning potential that the STL does, which puts downward pressure on the value of the licence.

Expert Report of D. Stacey, Tab 6A of MR at pp. 100-102.

**F. City Council Improperly Adopted the TTL and the Taxicab Licensing Revisions**

33. On February 19, 2014, Toronto's City Council voted to adopt all of the staff recommendations that were the subject of a previous Committee decision and that were set out in the agenda made available to the public before that Council meeting. As set out in the Application, Council improperly brought and passed motions to expand the scope of the recommendations that were before it and contrary to the procedural by-law required by the provincial government under the *City of Toronto Act, 2006*.

Affidavit of Joel Barr, Tab 2 of AR, pp. 31-41, paras. 39-76.

34. In particular, the Committee had decided that the matter of the TTL regime should be subject to a further staff report due in February 2015. This decision was made at the Committee's meeting of January 27, 2014. The Committee did not put to Council any recommendations concerning the TTL for its February 19, 2014 meeting. Council improperly brought them forward as hereinafter particularized.

Affidavit of Joel Barr, Tab 2 of AR, pp. 28-31, paras. 25-38.

35. At the February 19, 2014 Council meeting, Councillor McMahon moved a motion without notice to adopt the TTL recommendations that had been referred for further consideration by the Committee. Her motion was improperly moved, a vote requiring a two-thirds' majority to pass was not called (only a simple majority vote was called), and passed.

Affidavit of Joel Barr, Tab 2 of AR, p. 34, para. 50; see also Exhibit M: Summary of Council Meeting, Tab 2M of AR, p. 258 and following.

36. With the TTL regime now improperly before Council, Councillor Minnan-Wong then moved another motion without notice to push forward the start date of one of the



recommendations dealing with the issuance of TTLs, from January 1, 2019 to July 1, 2014.

This motion also passed.

Affidavit of Joel Barr, Tab 2 of AR, pp. 36-37, para. 61; see also Exhibit M: Summary of Council Meeting, Tab 2M of AR, p. 258 and following.

37. This amendment flies in the face of what was recommended by City Staff. The Final Report, as drafted by City Staff, discussed the rationale for the timing of the implementation of the TTL **beginning January 1, 2019**, as follows:

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Issuance of the Toronto Taxicab Licence, upon the transfer of a Standard Licence, to be delayed until January 1, 2019 **to facilitate the requisite industry adjustments.**

**A gradual transition to the Toronto Taxicab Licensing operating model is necessary, in order to permit time for the industry to adjust and realign , as is necessary, to accommodate this new operating model.**

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**In order for the industry to adjust** its operational model to the proposed TTL, it is recommended that the Standard Taxicab be transitioned to the TTL starting January 1, 2019. **This allows for 5 years of operation of the TTL within the current Standard Taxicab operating** structure and then a measured implementation of the Standard Taxicab to the TTL. [emphasis added].

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, pp.165 and 198.

38. Ms. Cook, of MLS, also indicated as much during the February 19, 2014 Council meeting: a date of January 1, 2019 was specifically and purposefully chosen out of a concern for fairness to the industry participants that would be affected by the creation of the TTL (*i.e.*, STL holders).

Affidavit of Joel Barr, Tab 2 of AR, pp. 32-33, paras. 44-45; see also Exhibit M: Summary of Council Meeting, Tab 2M of MR, p. 351 at 121:25.

39. Throughout the meeting Councillors expressed concern that Council's actions would trigger legal proceedings, and indeed some councillor's indicated that they expected a legal challenge to the changes they were adopting that day.

Affidavit of Joel Barr, Tab 2M of AR, at pp. 35-36, paras. 55-58; see also Exhibit M: Summary of City Council Meeting, Tab 2M of A, p. 361, at 353:55 and following, p. 363 at 364:35, and p. 365 at 454:25.

**G. A July 1, 2014 implementation date of the of the TTL and the Taxicab Licensing Revisions will cause irreparable harm**

40. The entire taxicab industry will be impacted by the implementation of the TTL and associated Taxicab Licensing Revisions. The following groups of individuals will be irreparably harmed if an interim injunction is not granted and the TTL regime is implemented before the Application to Quash is heard:

- 1) Current STL taxicab owners that are obligated by the *Toronto Municipal Code Chapter 545* (the "*Code*") to sell or transfer their licence before the application will be disposed of. For example, under s. 142B(3) of that section of the *Code*, the estate of a deceased owner of an STL taxicab whose licence will terminate one year from the date of death of the deceased owner unless sold or transferred prior to that date;
- 2) Any owner of an STL taxicab that sells it after July 1, 2014 and before the Application to Quash can be disposed of for a reduced market value; and
- 3) Lessees, drivers and operators of leased STL taxicabs that will suffer loss of employment and other income when STL taxicabs are converted into TTL taxicabs because TTLs cannot be leased.

**i. Current STL holders that are obligated by law to sell or transfer their licences within the next 6-8 months.**

41. The *Toronto Municipal Code* Chapter dealing with taxicab licensing requires that upon the death of a STL holder, the STL must thereafter be registered in the name of the estate of that person and that the estate is required to sell the STL within 12 months of the date of the death. The chapter also provides that the deceased's personal representatives are deemed to be the holder of the STL.

*Toronto Municipal Code*, Chapter 545, ss. 142 B(2) and (3), Tab 8 of Applicant's Brief of Authorities ("BOA").

42. The imminent implementation of the TTL causes great hardship for individuals who are widows of a deceased holder of STLs. Two such individuals are Ms. Gillard and Ms. Schneider, both of whom have sworn affidavits in support of this motion.

43. Ms. Gillard is the Estate Trustee and sole beneficiary of the Estate of John Ryan, who died on October 23, 2013. Ms. Schneider is the beneficiary under the Estate of her late husband, Sam Schneider. Messrs. Ryan and Schneider were the holders of two STLs each and were decades-long drivers of taxicabs.

Affidavit of Margaret F. Gillard, Tab 2 of MR, pp. 8-9, at paras. 2-4.

Affidavit of Shirley Schneider, Tab 3 of MR, p. 13, paras. 2-4.

44. The 12-month period in which to dispose of the STLs by Ms. Gillard will expire before the Application to Quash can be heard. This means that unless Ms. Gillard sells the STLs within the next two weeks (*i.e.*, before the new licensing regime is implemented), she will be forced to sell them as TTLs. If the Application to Quash is successful, then Ms Gillard will be deprived of a remedy.

Affidavit of Margaret F. Gillard, Tab 2 of MR, pp. 9-10, paras. 8-12.

45. Ms. Schneider faces a similar deadline. She will have to find buyers within the next two weeks if the STLs are to be sold as STLs. If she sells the STLs, Ms. Schneider would also forfeit income from leasing the taxicabs for the next eight to ten months (approximately \$2,800/month).

Affidavit of Shirley Schneider, Tab 3 of MR, p. 13, paras. 4, 16, and 18.

46. After July 1, 2014, any purchasers of the STLs from Ms. Gillard or Ms. Schneider will have to incur the additional cost of approximately \$30,000 to convert the taxicabs into wheelchair accessible vehicles and the additional costs to insure a wheelchair accessible vehicle (approximately \$10,000 more per year than to insure a standard vehicle). Nor would the new owners be permitted to lease the taxicab and derive income there from.

Affidavit of Margaret F. Gillard, Tab 2 of MR, pp. 9-10, paras. 8-9.

Affidavit of Shirley Schneider, Tab 3 of MR, p. 15, paras. 10-11.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. para. 24.

47. It is estimated that the value of an STL will drop by approximately \$100,000 after July 1, 2014.

Affidavit of Margaret F. Gillard, Tab 2 of MR, p. 10, para. 11.

**ii. Any holder of an STL that sells his or her STL licence after July 1, 2014 and before the application can be determined will be for less than market value.**

48. The same loss in value will be suffered by any holder that sells his or her STL after July 1, 2014 because of the reduced value due to the limitations of the TTL.

**iii. The Lessees and Agents that drive or manage leased STL taxicabs will lose their employment or source of income.**

49. As of January 2014, there were approximately 891 Lessees and 437 Agents that have entered into agreements with holders of STLs to manage or operate a Standard taxicab.

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, p. 159.

50. As STL licences are converted to TTLs, the restriction on leasing the taxicabs will result in Lessees and Agents losing their employment or source of income.

51. For example, Ms. Gillard currently has three drivers that drive her taxicabs and Ms. Schneider has two drivers. If either widow is forced to sell those taxicabs as a TTL, those drivers will no longer be employed driving her taxicabs, because TTL taxicabs cannot be leased.

Affidavit of Margaret F. Gillard, Tab 2 of MR, pp. 10, para. 13.

Affidavit of Shirley Schneider, Tab 3 of MR, p. 15, para. 13.

52. Similarly, if the widows are forced to sell the taxicabs as TTLs, their Agents will no longer be able to benefit from income they receive by managing and leasing the taxicabs.

Affidavit of Margaret F. Gillard, Tab 2 of MR, p. 11, para. 14.

Affidavit of Shirley Schneider, Tab 3 of MR, p. 16, paras. 14.

**PART III - LAW AND ARGUMENT - TEST FOR AN INJUNCTION**

53. The Applicant meets the tripartite test for granting an injunction because there a serious issue to be tried, it and its members will suffer irreparable harm absent the stay, and the balance of convenience favours the Applicant's request for a stay.

*RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. (“*RJR-MacDonald*”),  
Tab 1 of Applicant’s BOA.

**A. There is a serious issue to be tried**

54. The Notice of Application establishes that there is a serious issue to be tried, which meets the low threshold for establishing that there is a serious issue to be tried. The Court need not engage in a prolonged examination of the merits of the Application, but in any event it deals with a municipal government’s non-respect of its own procedural by-law, amongst others, which is a serious matter.

*RJR-MacDonald*, Tab 1 of BOA, at para. 49.

55. The Application is neither frivolous nor vexatious. Once this is established, and even if the Court is of the opinion that the Application is likely to fail when it is heard, the Court should nevertheless she should proceed to consider the irreparable harm and balance of convenience.

*RJR-MacDonald*, Tab 1 of BOA at para. 50.

56. The Applicant alleges that the City did not adhere to the principles of procedural fairness and obligation to act in good faith in the adoption of the Taxicab Licensing Revisions. City Councillors brought motions improperly, without notice and in breach of Council’s own procedural by-law.

57. The procedural by-law requires Councillors to make a motion to remove an item if it is under the Committee’s purview. The TTL licensing regime provisions were under the Committee’s purview at the time Council voted to adopt them. Council did not move the

requisite motion before voting on the TTL items. As such, Council failed to follow its own legislated process for creating laws.

*Toronto Municipal Code, Chapter 27, Council Procedures, §27-60, Tab 10 of BOA.*

58. Then, City Council adopted a key proposal (i.e. start date of July 1, 2014) which was made for the first time at the Council meeting, without notice and without any consideration or analysis of the impact on those who would be inevitably affected, and whose financial interests would be severely damaged. This failure by Council to give stakeholders proper notice and an opportunity to be heard on the proposed start date is in flagrant violation of the proper of the City's obligation to adhere to principles of procedural fairness and to act in good faith.

59. Councillors even acknowledged during the meeting of February 19, 2014 that their conduct was so controversial that a legal challenge was not only likely, but expected.

*Affidavit of Joel Barr, Tab 2M of AR, at pp. 35-36, paras. 55-58; see also Exhibit M: Summary of City Council Meeting, Tab 2M of A, p. 361, at 353:55 and following, p. 363 at 364:35, and p. 365 at 454:25.*

60. The Applicant has filed a lengthy affidavit in support of its application, with fifteen exhibits, one of which contains a day's worth of video footage from the Council meeting. An expert's report will also be filed. For a proper determination of the merits of the TTA's application, the evidence must be fully considered by the judge hearing the application.

**B. The Applicant will suffer irreparable harm**

61. As described in the paragraphs above, if this injunction is not granted, there are three categories of people (all of whom are members of the TTA) that will suffer irreparable harm:

- 1) Current STL taxicab owners that are obligated by the *Toronto Municipal Code Chapter 545* (the “Code”) to sell or transfer their licence before the application will be disposed of. For example, under s. 142B(3) of that section of the *Code*, the estate of a deceased owner of an STL taxicab whose licence will terminate one year from the date of death of the deceased owner unless sold or transferred prior to that date;
- 2) Any owner of an STL taxicab that sells it after July 1, 2014 and before the application can be disposed of for a reduced market value; and
- 3) Lessees, drivers and operators of leased STL taxicabs that will suffer loss of employment and other income when STL taxicabs are converted into TTL taxicabs because TTLs cannot be leased.

62. What is common to all of these individuals is that the harm suffered by them is **unrecoverable** from any other person.

63. The Ontario Superior Court has held that even if a loss can be calculated, the applicant will suffer irreparable harm if it is unable to recover those damages.

*Apotex Inc. v. Minister of Health and Long Term Care et al.*, 2006 CanLII 34411 (ONSC), Tab 2 of BOA, at para. 3.

64. For example, if Ms. Schneider or Ms. Gillard’s STL licenses are currently worth \$109,466 on the market (the average price of a STL as of April 22), and that value falls to \$60,000 as a TTL, that loss of \$100,000 (\$50,000 x 2) can be calculated, however, it cannot be recovered. Ms. Gillard and Ms. Schneider may not have a cause of action against the City for the shortfall in the transaction price as compared to what she could have received had she sold her licences as STLs.



Affidavit of Iryna Dubinets, Exhibit D: City of Toronto Response to Request for Information, Tab 5D of MR, p. 89.

65. Historically, Canadian courts have recognized that changes to a taxicab licensing regime can have irreparable and irrecoverable detrimental effects to the industry participants, and have granted stays pending a judicial review of the impugned amendments.

66. For instance, in *Black Top Cabs v. Passenger Transportation Board*, 2013 BCSC 1166, the respondent Board (which is similar to the City of Toronto in that it grants taxi licences and sets the terms and conditions of those licences) had amended the licences of certain cab companies, allowing them to operate in the city during peak periods.

*Black Top Cabs v. Passenger Transportation Board*, 2013 BCSC 1166, Tab 2 of BOA at para. 5.

67. The impugned amendment adopted by the Board impinged on the applicants' licences, which had previously granted them exclusive right to operate within the city. Black Tops sought a stay of pending a judicial review of the decision. The Court found in favour of the applicants, stating:

[11] If a stay is not granted, there will be more of the respondent's cabs operating and these will compete with the petitioners' cabs for business. [...]

[12] Accordingly, I find that the petitioners would suffer financial harm unless a stay is granted.

[13] If the petitioners are successful in their application for the judicial review of the October 2012 decision, **the petitioners would not be able to collect on the damages suffered. In effect, the Board has immunity.** [emphasis added]

*Black Top Cabs v. Passenger Transportation Board*, 2013 BCSC 1166, Tab 3 of BOA, at paras. 11-13.

68. Similarly, *Unicity Taxi Ltd. v. Manitoba Taxicab Board*, the applicants, Unicity Taxi and Duffy Taxi (“Unicity and Duffy’s”), brought an application to stay an order of the Manitoba Taxicab Board pending disposition of an application to quash the order. The Board had decided to convert taxi licences held by another taxicab company, Blueline, from “premium licences” to “standard licences”.

*Unicity Taxi Ltd. v. Manitoba Taxicab Board*, [1998] M.J. No. 68, Tab 4 of BOA.

69. In granting the stay, the court accepted Unicity and Duffy’s position that they would suffer irreparable harm as a result of the Board’s decision because Blueline would be able to compete directly with Unicity and Duffy by virtue of its new licence class. Furthermore, the court agreed that such harm could not be compensated for in damages, **as there is no one against whom the damages could be awarded.**

*Unicity Taxi Ltd. v. Manitoba Taxicab Board*, [1998] M.J. No. 68, Tab 4 of BOA at paras. 23, 30-31.

70. For individuals like Ms. Gillard and Ms. Schneider, the loss in value of the licences is not a hypothetical loss. They are required by law to sell those licences within 12 months of the death of their partners, and as such they will have to accept whatever the market value is for the STL or TTL is at the time of the sale.

71. Moreover, any taxicabs are sold after July 1, 2014 will require significant a financial investment to upgrade the taxicab to the meet the new wheelchair accessible requirements. If the TTL regime is set aside, from whom would that unnecessary investment be recovered?

72. The shortfall in the value of the licence and funds expended to purchase wheelchair accessible taxicabs is seemingly irrecoverable. The City, in effect, will claim immunity from

the damages suffered by individuals such as Ms. Gillard and Ms. Schneider in the same way the Board had immunity in *Black Tops*.

73. In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, the City of Calgary applied to stay the judgment of the Alberta Court of Appeal pending its application for leave to appeal to the SCC. At issue was the Court's declaration that certain by-law provisions were *ultra vires* the City. The effect of this declaration was to remove the restriction on issuing taxi plate licenses, changing the current system to an "open" system without any restrictions on the number of plates issued.

*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 243, Tab 5 of BOA

74. The applicants argued that without a stay, the status quo would be altered and the resulting change to the taxicab licensing system before the final outcome of the appeal would cause irreparable harm as "changing from one system to another is fraught with turmoil and disruption, creating complex problems that are difficult to assess in advance".

*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 243, Tab 5 of BOA, at para. 13.

75. In granting the stay, the Court of Appeal held that certain license holders would suffer significant and irreparable harm should the system be changed to an "open" system. At paragraph 25, the Court stated:

I am satisfied that the current TPL holders could suffer irreparable harm if the stay is not granted. I accept that the value of the plates may currently be damaged by the cloud cast by the current court decision. Nonetheless, I am satisfied that some of the current large TPL holders could suffer irreparable harm to their businesses should the stay not be granted. A sudden influx of licenses could easily lead to significant loss of

drivers and customers, and eviscerate their operations. **Yet, even if successful on appeal, they could be without recourse. The current brokers and owners have a stake in this decision, and I am satisfied they may well sustain irreparable damage that will not be compensable should this court's decision be reversed on appeal.** [emphasis added]

*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 243, Tab 5 of BOA, at para 25.

76. Further authority for the principle that the court should also make a finding irreparable harm where the impact of a policy decision cannot be easily “undone” is evident in the Ontario Divisional Court’s decision in *Toronto Taxicabs Owners and Operators Assn. v. Toronto (City)*.

*Toronto Taxicabs Owners and Operators Assn. v. Toronto (City)*, [2001] O.J. No. 4979, Tab 6 of BOA.

77. The Court in this matter considered an application by the Association for a stay of the City of Toronto’s decision to issue 264 new Ambassador licences pending a judicial review of the challenge to the City’s authority to do so. The court granted an injunction, accepting the applicant’s argument that there would be irreparable harm:

...if the 264 new ambassador licences which are now authorized are issued, there is no mechanism in place to revoke those licences once issued and that the economic harm to the 3,400 owners and drivers will be both irreparable and permanent and cannot be compensated in damages<sup>2</sup>.

*Toronto Taxicabs Owners and Operators Assn. v. Toronto (City)*, [2001] O.J. No. 4979, Tab 6 of BOA at para. 6.

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<sup>2</sup> The injunction was overturned on appeal on different grounds: see [2001] O.J. No. 5217 at Tab 7 of BOA, because proper notice had not been provided to the appellants pursuant to rule 37.01, and those appellants were deprived of the opportunity to make submissions. However, the instant matter is distinguishable in the Application to Quash seeks to set aside a by-law on different ground and no one has yet taken any steps under it, unlike the above case. Moreover, the issue in that case and in the instant case dealing with the lack of a mechanism to revoke licences in the event the Application to Quash is successful was not contested and remains valid considerations.

78. The TTL licence confers greater rights than the Ambassador licence, so it would not be unreasonable to expect a large influx of transfers from the Ambassador licence to the TTL. But if the TTA is successful on its application, it is unclear what will become of the Ambassador licences that have been converted to a TTL. Will they revert back to Ambassador licences?

79. Finally, Lessees and Agents will suffer irreparable harm upon the implementation of the TTL regime as they will no longer be able work under pursuant to the leasing contracts with STL owners when those taxicab licences are converted to TTLs. The harm is irreparable because it cannot be cured: the Agents and Lessees cannot collect damages from the City, as the City is not a party to the lease agreements.

*RJR-MacDonald, Tab 1 of BOA, at para. 59.*

### **C. The Balance of Convenience Favours a Stay**

80. The balance of convenience favours a stay for four reasons:

- i. The very notion of a start date for the TTLs was not even properly before Council at its February 19, 2014 meeting. The start date of July 1, 2014 cannot be justified at law.**

81. As described above, the amendment introduced by Councillor Minnan-Wong at the February 19, 2014 City Council meeting to push forward the start date of the TTL from January 1, 2019 to July 1, 2014 is one of the key challenges the TTA has brought against the City. The City violated its own procedural by-laws in even considering this matter in that the Committee had made a decision to seek more input from City Staff. There was no notice that a start date for the TTLs would be considered, let alone a start date that was five years earlier than even what Staff had recommended.

82. As such, the issue of the July 1, 2014 start date is at the heart of the Applicant's application to quash, and is not merely a by-product or ancillary to the new bill.

- ii. **If an injunction is not granted, STL holders will suffer prejudice by providing them less than two weeks to decide what to do with their licence (i.e. sell it immediately as an STL, or sell it later as an TTL).**

83. The City's conduct in enacting the new by-law two weeks prior to its effective date is manifestly unfair to STL owners. STL owners will be deprived of adequate time to make an informed decision as to if, when and how they should dispose of their STLs before the changes are implemented.

84. To this end, the City's conduct flies in the face of the advice it received from City Staff and for which the Committee sought more input, which was to facilitate a measured implementation over five years. The Final Report published in January of 2014 stated that "A gradual transition to the Toronto Taxicab Licensing operating model is necessary, in order to permit time for the industry to adjust and realign , as is necessary, to accommodate this new operating model."

Affidavit of Joel Barr, Exhibit H: Final Report, Tab 2H of AR, pp.165 and 198.

85. The point of the recommendation for a January 2019 start date was specifically to avoid the type of prejudice and harm that will ensue if an injunction is not granted in this case. The City's own conduct is creating the need for an injunction. Had City Council not ignored its own procedural by-law in adopting the TTL in the first place, or at the very least established a reasonable timeline for the introduction of the TTL (had it been so authorized to make that decision), the application would have been disposed of before anyone's rights were harmed or interfered with.

**iii. Not granting a stay will result in inconvenience and disruption to the entire industry if the Applicant is successful in the application to quash.**

86. The Court should also consider the inconvenience and disruption that will result to the entire industry if the new TTL is implemented and the entire system begins to transition to the new licence, but then the TTA is ultimately successful on its application and the TTL is reversed.

87. In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, the court held that an injunction would "avoid the considerable disruption resulting from immediately changing from one system to another, followed by yet another disruption should the appeal fail and the system change yet again".

*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 243, Tab 5 of BOA at para. 28.

88. Should an injunction be denied, the entire Toronto taxi licensing system will change in less than two weeks. Both STLs and Ambassador licences will transition to TTLs, money will be spent upgrading taxicabs so they are wheelchair accessible, and some Lessees and Agents will lose their jobs.

89. If the TTA is successful on the application, the TTL regime will have to be reversed, which will cause in significant confusion, disruption and financial loss. It is unclear how these changes will be reversed. Will all TTLs revert to STLs? What about the Ambassador taxicab licences that were transitioned to TTLs?

**iv. The stay will not be for a long period of time, and no harm will result in maintain the status quo the status quo**

90. In *Black Top Cabs v. Passenger Transportation Board*, *supra*, the court held that maintaining the status quo pending the appeal made the most sense:

[15] The granting of the stay is likely not for a long period and will maintain the status quo for the petitioners and the respondent taxicab corporations...

[17] While I appreciate that the public may be better served by having more taxicabs operating, it is not of such compelling and immediate interest so as to outweigh the irreparable harm to the petitioners and the respondent taxicab corporations.

*Black Top Cabs v. Passenger Transportation Board*, 2013 BCSC 1166, Tab 3 of BOA at paras. 15 and 17.

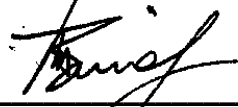
91. A stay should be granted in this instance for the same reasons: it will not be for a long period of time and it will maintain the status quo for the applicant and the City. The TTL regime is brand new and frankly, is coming into force five years earlier than City Staff had recommended. No harm will result in carrying on as the City has for years until the amendments can be properly reviewed. No one had ever expected a start date of July 1, 2014 in any event.

**PART IV - ORDER SOUGHT**

92. The Applicant seeks an Order restraining the implementation and enforcement of the Amended By-Law, pending the final disposition of the TTA's application to quash by-law.



93. ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 16th day of June, 2014.



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**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.
2. *Apotex Inc. v. Minister of Health and Long Term Care et al.*, 2006 CanLII 34411 (ONSC).
3. *Black Top Cabs v. Passenger Transportation Board*, 2013 BCSC 1166.
4. *Unicity Taxi Ltd. v. Manitoba Taxicab Board*, [1998] M.J. No. 68.
5. *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City of)*, 2002 ABCA 243.
6. *Toronto Taxicabs Owners and Operators Assn. v. Toronto (City)*, [2001] O.J. No. 4979.
7. *Toronto Taxicabs Owners and Operators Assn. v. Toronto (City)*, [2001] O.J. No. 5217.

**SCHEDULE “B”**

**LEGISLATION**

1. *Toronto Municipal Code*, Chapter 545, Licensing (excepts relating to taxicab licensing beginning at 545-110).
2. City of Toronto, Bill 543, “To amend City of Toronto Municipal Code Chapter 545, Licensing, respecting owners and drivers of taxicabs and taxicab brokers.”
3. *Toronto Municipal Code*, Chapter 27, Council Procedures.

TORONTO TAXI ALLIANCE INC.

and

CITY OF TORONTO

Court File No. CV-14-502614

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FACTUM OF  
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