

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CITY OF TORONTO

Applicant

- and -

UBER CANADA INC., UBER B.V. and RASIER OPERATIONS B.V.

Respondent

AFFIDAVIT OF TRACEY COOK

I, **TRACEY COOK**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am currently employed by the City of Toronto (the "City") as Executive Director, Municipal Licensing and Standards Division ("MLS").
2. I have held the position of Executive Director since January, 2012. Prior to that I was a member of Toronto Police Service for over 18 years, and left as a Detective in the Fraud Squad. In September 2002, I assumed the position of Director of Security for Coca-Cola, with responsibility for all aspects of security operations, labour dispute contingency and investigations across Canada. In 2009, I assumed the position of Vice President (GTA) for Securitas, a world-wide provider of contract security services, with responsibility for all aspects of business operations, human resources and customer service.

3. As it pertains to Business Licensing Enforcement and Permitting, MLS is responsible for administering and enforcing the *City of Toronto Municipal Code* (the "*Municipal Code*"), Chapter 545, Licensing. This Chapter licenses and regulates dozens of categories of businesses in Toronto, including taxicab brokerages, owners and drivers of taxicabs, owners and drivers of limousines, and limousine service companies. Chapter 545 is comprised of 44 articles, each of which contains regulations specific to different licence categories. Article I of Chapter 545 contains General Licensing Provisions applicable to all categories. Article VII governs taxicab brokers, Article VIII governs owners and drivers of taxicabs, and Article XXXIX governs owners and drivers of limousines and limousine service companies. Chapter 545, in its entirety, is on the City's website at http://www.toronto.ca/legdocs/municode/1184_545.pdf. Attached hereto and marked as Exhibits "A", "B", "C" and "D" respectively are Articles I, VII, VIII and XXXIX of Chapter 545 of the *Municipal Code*.

4. With respect to the operation of taxicabs and limousines in the Toronto, MLS's mandate includes managing the licence application and licence renewal processes and enforcing by-laws governing taxicabs, limousines, taxicab brokerages, and limousine service companies. MLS's enforcement role involves the prosecution of offences in the Ontario Court of Justice and bringing licensees before the Toronto Licensing Tribunal, a quasi-judicial adjudicative body which has the authority to revoke, suspend or place conditions upon licensees at a public hearing.

5. As the Executive Director, I have overall responsibility for MLS's licensing and enforcement functions and for developing policy, including submitting policy and by-law recommendations to City Council, among other things. Accordingly, I have knowledge of the matters to which I hereinafter depose and, where I have obtained information from others or from documents, I have so indicated and believe this information to be true.

Overview: Uber Operating in Violation of City Licensing Requirements

6. The City has broad authority under the *City of Toronto Act, 2006* to enact by-laws governing business licensing, including the authority to regulate taxicabs and limousines, establish the rates or fares to be charged, and to limit the number of taxicabs. In accordance with this authority, the City has determined that regulation of taxicabs and limousines is important to promote public safety, consumer protection, and the economic and environmental well-being of the City because these services are important parts of the City's overall transportation system.

7. Essentially, the City's taxicab and limousine licensing regime, set out in the *Municipal Code*, requires that:

- a. individuals who own or drive vehicles transporting passengers for compensation possess a City-issued taxicab or limousine driver's licence to do so;
- b. companies accepting requests in any manner for taxicabs used for hire possess a taxicab brokerage licence; and
- c. companies accepting calls in any manner for booking or arranging limousine transportation possess a limousine service company licence.

The licensing requirements for taxicab brokerages and limousine service companies apply whether they are carrying on business via phone, text, Internet website, or software application.

8. Uber disputes that it carries on business as a taxicab brokerage or limousine service company. It characterizes itself as a "technology company" that simply enables "ridesharing". This is an unsupportable characterization of Uber's business given the breadth and scope of its activities. First, according to the information that Uber makes publicly available, Uber recruits, screens, and arranges for drivers to take passengers from point A to point B, at the request of the

passenger. Uber collects payment for each trip from the passenger via the passenger's credit card, deducts a percentage for the services it provides, aggregates and transfers payment to the driver each week via direct deposit to the driver's bank account, and provides an electronic record of each trip to both the passenger and driver. Second, the term "ridesharing" is, in my view, another word for carpooling. It is abundantly clear from Uber's operations that it is not engaged in or facilitating carpooling. It brokers vehicle transportation for compensation only.

9. Uber employs several different models to provide services: UberX, UberXL, Uber Taxi, Uber Black, and Uber SUV. I have summarized below how Uber distinguishes these services for its customers but the bottom line is that, by offering these services, Uber is carrying on business as a taxicab brokerage and limousine service company under the *Municipal Code*.

10. In my affidavit, I review:

- a. The City's taxicab licensing regime, including the requirements that taxicab owners, drivers, and taxicab brokers must meet;
- b. The City's limousine licensing regime, including the requirements that limousine owners, drivers, and limousine service companies must meet;
- c. Uber's service models (UberX, UberXL, UberTaxi, UberSUV, and UberBlack);
- d. Requirements that Uber seeks to impose on users/passengers in Canada;
- e. Other legislative requirements that Uber operates in contravention of, including the *Highway Traffic Act* and the *Public Vehicles Act*; and
- f. The difficulty of enforcing the City's licensing requirements against Uber on an incident-by-incident basis.

City's Taxicab Licensing Regime

11. The City has licensed taxicabs for decades. Everyone who owns or drives a taxicab in Toronto or who operates as a taxicab brokerage must have a City-issued licence to carry on business in the City. The requirements to obtain these licences are set out in Sections 545-2A(9) and (44) of Article I of the *Municipal Code*, which is attached as Exhibit "A".

12. A taxicab is understood in the industry and by the public generally to be a motor vehicle that passengers hire to travel to a destination, for which they pay a fare. The City has divided taxicabs into several categories with different attributes for the purpose of licensing: accessible taxicabs, ambassador taxicabs, standard taxicabs, and Toronto Taxicabs.

13. Currently, there are 4,853 licensed taxicabs in Toronto, operated by 10,191 drivers, 3,907 owners, and 31 brokerages; these numbers are somewhat fluid, as new applications are granted and existing licences are suspended, for example. More than 15,000 people are employed directly and indirectly in the taxicab industry. An estimated 65,000 trips are taken in taxicabs every day in Toronto and, if an average fare of \$25 per trip is used, taxis generate an estimated \$1.62 million in fare revenue each day.

14. The specific requirements of taxicab brokers, drivers, and owners are set out in the portions of the *Municipal Code* attached to my affidavit. I will, however, summarize below some of the key requirements that the City imposes, all of which have been in place for many years.

a. Taxicab Brokers

15. The role and responsibilities of taxicab brokers are set out in Article VII, Taxicab Brokers, of the *Municipal Code*. At its core, the role of taxicab brokers is to respond to requests

for service from passengers and dispatch taxicabs in response. The precise manner in which taxicab brokerages carry on this business has, naturally, evolved over time.

16. The "traditional" model required customers to telephone the taxi broker, at which point the dispatcher would communicate by radio with the driver and convey a passenger's request to be picked up at a particular location. Passengers still request taxi service in this way today.

17. The use of smartphones by taxicab brokerages allows them to supplement their traditional dispatch services so that individuals can request a taxicab ride via a software application, and a driver can be dispatched in response. Along the same lines, passengers can also make requests for service via text message or the Internet on the websites of taxi brokers.

18. Uber is not the only company that offers a smartphone application to provide taxi brokerage service in Toronto. There are several licensed taxicab brokerages in Toronto that have applications that users may download to their smartphones to allow them to make a request for taxi service, communicate their location, and receive an ETA for the arrival of their taxi. These features are similar to those Uber's application provides. A key difference, however, is that the fares for rides requested via the applications used by licensed taxicab brokerages are calculated in accordance with the taximeter, and the service is provided by licensed taxicabs as required by the *Municipal Code*. To my knowledge, the licensed brokerages that have such applications include: Beck Taxi (www.becktaxi.com); Diamond Taxi (www.diamondtaxi.ca); Co-Op Cabs (www.co-opcabs.com); and City Taxi (www.citytaxitoronto.com).

19. The City has no issue with a taxicab brokerage using technology to facilitate the business of providing service to passengers requesting rides, so long as it obtains a taxicab brokerage licence, uses licensed taxicab drivers, dispatches licensed taxicab vehicles, and otherwise

complies with the requirements imposed on licensees to provide high-quality service, charge the legal fare, and maintain appropriate records, among other things.

20. The requirements imposed on taxicab brokerages are important from the City's perspective because they advance public policy objectives related to consumer protection, and the health, safety and well-being of people. For example, taxicab brokers are responsible for maintaining and providing records to MLS documenting, among other things, the drivers on whose behalf they agree to accept requests for rides, the number of requests for service they receive, the number of taxicabs operating with their brokerage at any given time, and passenger complaints or compliments. Taxicab brokers are also required to serve passengers on a first-call, first-served basis, and to record the reason for refusing calls for service, which aims to prevent discrimination and ensures equitable and fair service.

b. Taxicab Owners

21. The requirements and responsibilities of taxicab owners and drivers are set out in Article VIII, Owners and Drivers of Taxicabs, of the *Municipal Code*, attached as Exhibit "C". Under these provisions, the operation of a taxicab requires the owner and driver to be licensed.

22. As I referenced above, the City issues different taxicab licences for accessible taxicabs, ambassador taxicabs, standard taxicabs, and Toronto Taxicabs. For ambassador and Toronto Taxicabs, the vehicle owner must also drive the taxicab. Accessible and standard taxicab owners typically do not drive their taxicab and may lease these vehicles to City-licensed taxicab drivers.

23. Currently, the City has a restricted-entry model for taxicab licences, which is to say that only a specific number of taxicabs may operate. In regulating the taxi and limousine industries,

the City has concerned itself with the number of taxicabs on the road because an excessive number is likely to negatively impact customer service, public safety, and industry viability.

24. The City's role as regulator is not to protect the economic or business interests of industry participants. However, in my experience and knowledge, there are correlations between good driving, good service, and the economics of the industry. It is common wisdom among regulators that too many taxis driving for too little business encourages drivers and owners to cut corners by improperly maintaining vehicles, driving aggressively and dangerously, failing to provide service, or failing to provide good customer service, all of which compromises public safety and consumers. While these issues can theoretically be addressed through enforcement, there are significant costs of doing so, which include everything from hiring enforcement officers to processing charges using court services. Therefore, the City has determined that the best option is to ensure the industry operates in a stable environment that enables taxicab owners and drivers to meet the standards set by the City and maximizes their ability to do so.

25. The long-term economic sustainability of the industry is important to further the City's regulatory goal of having safe, affordable, and equitable service available to different constituencies who rely on taxicabs for everything from attending medical appointments to coming home from the grocery store. It is also the City's policy to increase the number of accessible taxicabs, which can be more costly than ordinary taxicabs to purchase and operate.

26. Regardless of the specific type of taxicab licence, there are requirements common to all owners. For example, owners are required to successfully complete a taxicab owner's course at the time that they apply for a licence, and successfully complete a refresher taxicab owner's course every four years. Owners must also ensure that their taxicabs are: equipped with a sealed taximeter that registers the distance travelled and computes fares in accordance with the tariffs

established by the City; equipped with specific emergency equipment; and inspected by a designated mechanic before the vehicle is used as a taxicab and twice per year thereafter.

27. Obviously, taxicabs are potentially on the road for many hours and driven many kilometres so these vehicles endure greater wear and tear than a typical, non-taxicab vehicle. Therefore, it is critical from a public safety perspective to ensure taxicabs on the road meet safety requirements. If a taxicab is inspected and found to have mechanical defects, the owner may not permit the vehicle to be operated until those defects have been repaired and the vehicle is re-inspected. There are also conditions with respect to how old a taxicab vehicle may be.

28. When licensees do not operate in accordance with the requirements of the *Municipal Code*, MLS may require them to attend before the Toronto Licensing Tribunal (the "TLT"), a quasi-judicial adjudicative body which has the power to determine whether or not the licence should be revoked, suspended, or have conditions placed upon it. For example, if a taxicab is inspected and found to have major mechanical defects, the vehicle's taxicab plate is removed from the taxicab and MLS may require that the owner attend at a public hearing before the TLT.

29. One of the most critical requirements imposed on taxicab owners for public safety and consumer protection is that every owner put in place comprehensive insurance for each taxicab he or she owns. Specifically, Section 545-149 of the *Municipal Code* requires that each taxicab have no less than \$2,000,000 of "comprehensive insurance against loss or damage resulting from bodily injury to or the death of one or more persons, or from loss or damage to property resulting from any one accident" and include "provision for passenger hazard". Insurance for taxicabs is more expensive than personal insurance that is typically held by individuals who do not use their vehicles for business. Section 545-479 requires the same insurance of limousines.

30. The *Municipal Code* also requires that the owner's insurance policy be endorsed to ensure that MLS is given at least 10 days' written notice of any cancellation, expiration or variation in the policy and that a certified copy of the insurance certificate must be files with MLS. As the Executive Director, I have authority to immediately suspend the licence of any owner when MLS receives notice that a taxicab is not insured in accordance with these rules and to maintain that suspension until the required insurance is put in place by the owner.

c. Taxicab Drivers

31. The City requires that every applicant for a taxicab driver's licence attend and successfully complete a 17-day taxicab driver's training course, which includes accessibility training to assist drivers in providing appropriate service to passengers with disabilities. Also, starting in 2015, driver training will begin including simulated defensive driving training to test and improve driver responses to a range of driving situations. Every four years, drivers must also complete a refresher course, an abbreviated version of the curriculum all drivers initially receive.

32. Other important taxicab driver requirements from a consumer protection and public safety perspective include: police and driving record checks at the time the licence is issued and periodically thereafter; that drivers work no more than 12 hours in any given 24-hour period; that the Taxi Bill of Rights, and the taxi driver's photo and licence be displayed in the taxicab; and that passengers be charged no more than the approved tariff as calculated by the taximeter. These requirements and the Taxi Bill of Rights are contained in the *Municipal Code* at Exhibit "C".

33. With respect to fares, the City has established the rates that taxicabs are permitted to charge. Taxicab brokers, owners, and drivers may not impose higher "surge pricing", nor are they permitted to charge any fee for assisting passengers with the loading or unloading of a wheelchair. The City has determined that these requirements are important consumer protection

measures. Permitted Taxicab Rates and Fares are set out in Appendix C to Chapter 545 of the *Municipal Code*, which is included in Exhibit "C".

City's Limousine Licensing Regime

34. The City has licensed limousines for years. Everyone who owns or drives a limousine in the City or who operates as a limousine service company (i.e. a limousine brokerage) must have a City-issued licence to carry on business in Toronto. These requirements are set out in Sections 545-2A(63) and (66) of Article I of the *Municipal Code*, which is attached as Exhibit "A".

35. A limousine is understood in the industry and by the public generally to be a luxury stretch or sedan automobile used to convey passengers on trips with fares typically charged at a flat rate based on the time that the limousine is engaged to provide service.

36. Under the provisions of Article XXXIX, Owners and Drivers of Limousines and Limousine Service Companies, of the *Municipal Code*:

- a. a limousine driver's licence authorizes a licensee to drive, but not own, a licensed limousine to pick up passengers in Toronto;
- b. a limousine owner's licence entitles a licensee to own and drive a limousine to pick up passengers in Toronto; and
- c. a limousine service company licence entitles the company to broker or arrange limousine rides for passengers.

37. Limousine services differ from taxicab services in that limousine rides must be pre-arranged at least 20 minutes before the pickup time and rides are charged at a flat rate. The minimum rate for limousine service is \$70 per hour for the first two hours or part thereof, and

limousine service companies must file a rate schedule with MLS. Metered rides are prohibited for limousines and limousines may not have taximeters installed.

38. Limousine drivers and owners are subject to the same types of conditions as taxicab drivers and owners. For example, Section 545-479 of the *Municipal Code* requires limousines to meet the same insurance requirements as taxicabs. Limousine owners and drivers must successfully complete specific training before they receive a licence and every four years thereafter. There are limits on how old a vehicle used as a limousine may be. Vehicles must pass mechanical safety inspections before they are licensed as limousines and twice per year thereafter. Potential consequences for owners when mechanical defects are identified are the same as for taxicabs, including removal of the limousine plate if major defects are identified.

39. All of these requirements are important from the City's perspective because they advance public policy objectives related to consumer protection, the health, safety and well-being of people, and the economic and environmental well-being of the City, as with taxicabs, above.

Background Checks Required by the City for Taxicab- and Limousine-related Licences

40. As part of the business licensing process, MLS requires all applicants for a business licence (including directors or officers involved in the operation of an applicant corporation) to provide a criminal background check showing a full record of criminal convictions; this check must be provided at the time of application and at least once every four years thereafter. To obtain a criminal background check, an individual must apply to a police agency and pay the applicable fee. MLS will not accept record checks completed by a third-party agency.

41. Applicants for taxi and limousine drivers licences must also submit a driver's record abstract from the Ontario Ministry of Transportation. A driver's record abstract provides a record of *Highway Traffic Act* convictions, including criminal driving convictions, for an individual.

42. MLS has the authority to require more frequent checks of an applicant if it considers it warranted in particular circumstances. If an applicant has criminal or driving convictions, MLS will determine if the applicant must be administratively denied a licence on the basis of the licensing thresholds set out in *Municipal Code*, Chapter 545, Appendix K, Business Licensing Thresholds, an extract of which is attached as Exhibit "E", although the complete document is available on the City's website.

43. Another step that MLS staff take to investigate each application for a licence and licence renewal is a search of the provincial Integrated Court Offences Network (ICON) system, which contains records of criminal, *Highway Traffic Act*, and by-law charges and convictions.

44. Taking into account all of the foregoing and any other available information, including public complaints, MLS has the power to deny a licence under the general provisions of Chapter 545 of the *Municipal Code*. If a licence is denied by MLS staff for any reason, the applicant may request a hearing before the TLT to have their application impartially reviewed.

45. In addition to these powers, MLS has authority to, at any time during the tenure of a business licence, bring a report before the TLT requesting that a licence be revoked, suspended, or have conditions placed upon it if MLS has concerns that the licensee is not operating in accordance with the requirements of the *Municipal Code*.

Uber's Business Model As Uber Advertises It

46. Currently, Uber advertises the following services in Toronto:
- a. UberX;
 - b. Uber XL;
 - c. UberBlack;
 - d. UberSUV; and
 - e. UberTaxi.

Each of these service models is explained below. I have obtained this information from Uber's website (www.uber.com), where it describes the services it provides, and from conversations with City staff who have used Uber services as part of MLS's investigations.

47. To use any of Uber's services, an individual is required to register an Uber user account via Uber's website. This process requires individuals to provide Uber with personal and credit card information so that Uber may charge them when they use an Uber service. Once a person has established an account, they can download the Uber application (or "app") to their phone and use it to request transportation on one of UberX, UberXL, UberBlack, UberSUV, or UberTaxi from their location to a destination. An Uber driver receives notification of the trip request through the Uber driver app on their phone, collects the individual, and uses the Uber driver app to record the length and duration of the trip. Uber charges the passenger a fare that corresponds to the category of service used and the pricing Uber has in effect at the time of the ride.

48. Under each of the UberX, UberXL, UberBlack, UberSUV, and UberTaxi service models, Uber is carrying on the business of a taxicab broker or limousine service company because it is accepting and processing requests for taxicab or limousine service from passengers,

communicating the requests to drivers, and calculating and collecting fares for each ride. Uber has not, to date, applied for or received a taxi brokerage or limousine service company licence that would potentially authorize it to carry on business in Toronto.

Uber's Promotion of UberX and UberXL Service

49. UberX is a taxi service providing transportation to members of the public using drivers who do not have City-issued taxicab driver licences and who drive four-door, sedan vehicles that are not licensed taxicabs. Attached as Exhibit "F" is a copy of a printout from Uber's website announcing the launch of UberX service in Toronto in September, 2014.

50. UberXL is based on the same principles as UberX. The service is provided by drivers who do not have City-issued taxi driver licences in personal vehicles that are not licensed as taxicabs. The distinction between UberX and UberXL, according to Uber, is that UberXL service is provided in large-format vehicles (i.e. vans), like a Dodge Caravan or Honda Odyssey. Therefore, UberXL and UberX are both essentially taxicab services, although one offers passengers a ride in a van versus a sedan. Attached as Exhibit "G" is a copy of a printout from Uber's website announcing the launch of UberXL service in Toronto in October, 2014.

51. UberX and UberXL charge fares that differ from the fares mandated by the City for taxicabs. Attached as Exhibit "H" to this affidavit is a chart summarizing information from Uber's website about the rates it charges for its UberX and UberXL services. For ease of reference, I have also included Uber's rates for its UberBlack, UberSUV, and UberTaxi services, and the taxicab and limousine rates established by the City.

52. From time to time, Uber also implements what it terms "surge pricing", i.e. Uber increases the prices it charges for rides when it determines demand is higher. Therefore, although

the rates summarized in Exhibit "H" are the "current published rates" for UberX or UberXL, the rates that individual users may be charged for any given trip may vary substantially. Attached as Exhibit "I" is a copy of some information regarding surge pricing from Uber's website. I have also attached as Exhibit "J" newspaper articles detailing consumers' experience with this pricing.

53. Several Uber users have stated in the media that they were subject to surge pricing in Toronto on Halloween night. On November 6, 2014, MLS received a complaint from a member of the public regarding his experience. His complaint and a subsequent e-mail chain is attached in redacted form as Exhibit "K" to this affidavit. Only the name and e-mail address of the complainant and internal communication among City staff have been redacted.

54. As set out in the chart attached as Exhibit "H", Uber also charges a "Safe Rides Fee" of \$1.00 for each ride on UberX and UberXL. Uber advertises that its Safe Rides Fee "supports continued efforts to ensure the safest possible platform for Uber riders and drivers, including a Federal, state, and local background check process, regular motor vehicle checks, driver safety education, development of safety features in the app, and more." Attached as Exhibit "L" is a copy of the Safe Rides Fee information available on Uber's website.

55. The UberX and UberXL services operate contrary to the City's by-laws because:

- a. Uber is acting as a taxi brokerage without a licence;
- b. Uber dispatches drivers that do not have City-issued taxicab driver licences;
- c. licensed taxicabs are not being used; and
- d. passenger fares are not calculated using a taximeter, nor at the rates required for taxicabs by the *Municipal Code*.

56. From the City's perspective, there are critical public safety and consumer protection issues that arise as a result of Uber's disregard for the City's licensing regime. For example, the vehicles used to provide UberX and UberXL service are not inspected for mechanical soundness. At best, Uber promotes itself as doing "visual inspections" of vehicles, which are inadequate to detect many mechanical defects. I also note that Mr. Reesor states in his report that not even a visual inspection was done of the vehicle that PI Dilorenzo used as an UberX driver.

57. Furthermore, UberX and UberXL drivers and vehicles may be inadequately insured. In recruiting drivers for these services, Uber markets to individuals who do not use their vehicles for commercial purposes. This is evident from the Uber website inviting individuals who are "at least 21 years old, with a personal licence and personal auto insurance" to register. Attached as Exhibit "M" is a copy of the Uber driver recruitment webpage. To the extent that the URL for this webpage is difficult to see, it is as follows: <https://partners.uber.com/signup/toronto>. These requirements contrast with the insurance requirements mandated by the City.

58. It is also important to note that individuals who drive personal vehicles for commercial purposes without disclosing this fact to their insurer may void their coverage. In Ontario, vehicle owners applying for automobile insurance are required to provide the information set out in the Ontario Application for Automobile Insurance, a standard form used by all insurance companies in Ontario, a copy of which is attached as Exhibit "N". This form is available from the Insurance Bureau of Canada's website and, among other things, requires vehicle owners to identify if they are using their vehicle to carry passengers for compensation or hire. Applicants must answer this question yes or no. If, when obtaining insurance, an applicant indicates that they do not carry passengers for hire and they fail to update their insurance company upon becoming drivers for Uber, there are potentially significant implications for insurance coverage.

59. In this context, I read with interest Uber's advertisement that "every ride on the UberX platform is backed by \$5,000,000 of contingent coverage for bodily injury and property damage to third parties." This statement is not, however, supported by any information or documentation from Uber. In any event, even if this statement is correct, this is insufficient to meet the requirements of the *Municipal Code*, which I have summarized in paragraphs 31, 32 and 40.

60. Attached as Exhibit "O" is a copy of information that I found on Uber's website about UberX Ridesharing Insurance Coverage. I found this information on Uber's website, by going to "Menu", then "Safety", and then "Read More" under the heading "End-To-End Insurance, We Have You Covered." On its face, there is nothing in this document that would confirm whether or to what extent this insurance coverage is available in Ontario, but this was the only information regarding insurance that I could locate on the Uber website.

61. When I clicked on the words "commercial insurance policy" on the page, I was directed to another website, www.scribd.com, on which there is a "Certificate of Liability Insurance" and a "Ridesharing Insurance Policy 7-14-14" (the "Policy") for Rasier LLC, a company with a San Francisco address, issued by James River Insurance Company. I note that the attached policy covers liability, uninsured motorists, and underinsured motorists to a maximum of \$1,000,000 in each category per incident, less than the \$2,000,000 coverage required by the *Municipal Code* and obviously less than the \$5,000,000 coverage Uber promotes itself as having. More importantly, however, the named insureds under this Policy are Rasier LLC and Uber Technologies Inc.; I am advised by the City's solicitors that corporate searches recently conducted indicate that neither of these companies are registered either provincially or federally to operate in Canada. I am also not aware of any potential legal relationship between these companies and Ontario passengers or drivers that would provide some basis to believe this

coverage (such as it is) extends to either drivers or passengers in Toronto. Given all of these concerns, the bottom line is that the City does not agree with any claim by Uber that its insurance is sufficient or better than the minimum insurance coverage requirements imposed by the City. Attached as Exhibit "P" is a copy of the information I found on the scribd.com website.

62. Even if it could be demonstrated that the Policy was applicable in Ontario, a critical issue is that the Policy limits coverage to situations where an Uber driver has already accepted a passenger pick-up in the Uber app and is en-route to the fare or is delivering service; the Policy does not apply to a driver who is searching for or selecting fares on the Uber application. In San Francisco, when a driver hit a 6-year-old child while searching for fares using the Uber app, Uber denied any liability, as no Uber passenger had requested a fare at the time of the accident (and so Uber argued that the driver had no reason to be using the application at the time of the accident) and because the driver was an "independent contractor". Whether these are valid legal arguments or not remains to be proven in court, but it does point out a potential issue. Attached as Exhibit "Q" are copies of newspaper articles reporting on this story, as well as Uber's filed legal defence to the San Francisco claim.

63. The City's licensing regime contains insurance requirements because the adequacy of insurance is critical public safety issue. Uber's flouting of the City's licensing regime does not permit the City to investigate whether Uber's insurance in fact meets its requirements or lives up to the bald-faced representations Uber makes with respect to its alleged \$5,000,000 policy.

64. Also, given the breadth of the release that Uber requires potential passengers to agree to when registering to use their services (which I discuss below), it is apparent that Uber seeks to drastically curtail any legal remedies passengers might have if they were injured.

65. I have read Mr. Reesor's affidavit and the "Transportation Service Agreement" attached to his report. I noted that the Agreement is ostensibly a legal agreement between the driver and Rasier Operations B.V. and contains provisions that purport to: (i) require an Uber driver to ensure that he or she has all necessary licences and insurance to operate in the jurisdiction in which they are driving and; (ii) drastically curtail any legal remedies drivers might have against Uber in the event of any injury or accident. I do not know whether this Agreement is legally enforceable in Ontario but I have assumed that Uber intends it to have legal effect since it was posted to the account of UberX drivers (and perhaps to the driver accounts of other Uber drivers). On their face, the terms of the Agreement are entirely inconsistent with Uber's marketing, which tells drivers and passengers Uber ensures "all ridesharing transportation partners are covered by best-in-class commercial insurance coverage in the event of an accident".

Uber's Promotion of UberBlack and UberSUV

66. UberBlack is a limousine service. Passengers requesting UberBlack service via the Uber app travel in a sedan, an example of which is a Lincoln Town Car, according to Uber's website.

67. UberSUV is a version of the UberBlack limousine service that allows passengers to travel in a large sport utility vehicle, such as a GMC Yukon or Lincoln Navigator.

68. A copy of the information available on Uber's website relating to the rates that Uber charges for its UberBlack and UberSUV services is attached as Exhibit "H". These rates, which are based on time and distance, do not meet the Municipal Code requirement that limousine service be charged at a rate of \$70 per hour for the first two hours.

69. Rates for both UberBlack and UberSUV may also be subject to Uber's "surge pricing", referenced above. Therefore, depending upon Uber's assessment of demand, prices charged to users for specific trips may substantially exceed prices Uber advertises on its website.

70. With UberBlack and UberSUV, passengers may not pre-arrange rides. The *Municipal Code*, however, requires limousine services to be pre-arranged; this is part of how the City distinguishes between taxicabs and limousines. Therefore, insofar as they do not allow pre-arranged rides, UberBlack and UberSUV are operating as high-end taxicabs. Attached as Exhibit "R" to this affidavit is a screen capture from Uber's website that contains information provided in response to the hypothetical questions "Can I Make a Reservation in Advance?" and "Can I request a particular driver?"; the short answer to both is no.

71. Interestingly, I understand that the UberBlack and UberSUV services are provided by City-licensed limousine drivers. This information is set out on Uber's website, which indicates on its "Drive For Uber" recruitment pages that drivers for UberBlack and UberSUV must be professional limousine drivers with a commercial licence and commercial insurance.

72. The City of Toronto requires limousine drivers to complete a training course in order to obtain a license. Through information provided to MLS staff by participants in the limousine licensing course, Uber has told potential drivers that it will reimburse them for the cost of the limousine driver training course if they provide proof of their registration in the course and then complete a ride as an UberBlack or UberSUV driver. Attached as Exhibit "S" is a redacted copy of an e-mail from Uber to a person enrolled in the City's limousine training course. The redacted information includes the name of the person from whom MLS received this e-mail and internal communication among City staff afterward; the substantive portion is not redacted.

73. UberBlack and UberSUV services breach the City's by-laws because:
- a. Uber does not have a limousine service company licence to permit it to broker or arrange limousine rides for passengers;
 - b. Passenger fares are not calculated in accordance with the rates set out in the *Municipal Code*; and
 - c. Uber does not permit passengers to pre-arrange their trips.

Uber's Promotion of UberTaxi

74. Uber provides its UberTaxi service using City-licensed taxicab drivers and licensed taxicab vehicles. This information is set out on Uber's website, which states that UberTaxi allows users to "request and pay for a taxi, at standard taxi meter rates, plus a 20% gratuity automatically added for the driver by default," though I understand this gratuity can be adjusted.

75. According to Uber's website, an UberTaxi driver will use the taximeter in their vehicle and then input the fare into the Uber application at the end of the ride so that the passenger is charged the rate calculated by and shown on the taximeter.

76. UberTaxi's operations are contrary to the City's by-laws because Uber is not a licensed taxicab brokerage and only licensed taxicab brokerages may accept requests for taxicab rides.

Other Indicia that Uber is Operating as a Taxicab Brokerage or Limousine Service Company

77. Uber advertises that, when it recruits drivers, it screens them by requiring them to consent to criminal record checks conducted by a third-party provider, ISB Canada. This is part of how Uber positions itself as a "safe alternative" to licensed taxicab or limousine services. Attached as Exhibit "T" are pages from Uber's website that speak to how it advertises its driver screening.

78. While I dispute that Uber's security screening processes meet or exceed the standards MLS has established as part of its licensing process, the point is that these measures demonstrate Uber is operating as a taxicab brokerage. It is apparent to me that Uber advertises that the drivers it recruits and trains meet certain standards as part of Uber's effort to compete with existing taxicab brokerages for business in Toronto. I would say the same about Uber's "visual inspections" of driver's vehicles, its requirements that vehicles be in "excellent condition", the "driver safety education" that Uber says is supported by the Safe Rides Fee, and its public relations messaging about insurance coverage. These are all efforts by Uber to position itself as a taxicab brokerage offering better service than existing, licensed brokerages.

79. Uber's efforts to recruit, screen, and train drivers and dispatch them in response to requests for service from passengers substantiates the argument that Uber is acting as a taxicab brokerage or limousine service company and is, accordingly, operating in breach of the requirement to obtain a business licence from the City.

Requirements Imposed on Passengers by Uber

80. As referenced above, individuals must register and set up an Uber user account before they can request transportation. When individuals set up their accounts, the Uber website states that "By clicking 'Submit' below, you are agreeing to the Uber Terms and Conditions". On the Uber website, at www.uber.com/legal/can/terms, I found the "Terms and Conditions" for users in Canada (the "User Terms"). I attach a copy of the User Terms as Exhibit "U", which I had City staff print from the Uber website on or about October 29, 2014.

81. According to the Terms and Conditions, individuals using Uber's services are contracting with Uber B.V. ("Uber"), a "private limited liability company established in the Netherlands." It is of great concern to me that, in its User Terms, Uber attempts to distance itself from those it

defines as "Transportation Providers", i.e. the drivers of the cars in which passengers are riding. Under the heading "How to Use the Service and the Application", Uber states that "Uber itself does not provide Transportation Services, and Uber is not a transportation carrier... Uber only acts as an intermediary between you [the user] and the Transportation Provider. The provision of the transportation services by the Transportation Provider to you [the user] is therefore subject to the agreement (to be) entered into between you and the Transportation Provider. Uber shall never be a party to such agreement." At the same time, however, the User Terms are clear that Uber establishes the pricing for the services provided, which it may modify at its discretion, and collects users' transaction details (as set out under the heading "Payment").

82. Further on in the User Terms, Uber has included a very broad waiver of liability provision. Specifically, Uber states that the "quality of the transportation services" obtained through Uber is "entirely the responsibility of the Transportation Provider who ultimately provides such transportation services to you", which is to say the driver of the vehicle. The User Terms go on to state that "Uber under no circumstances accepts liability in connection with and/or arising from the transportation services provided" by the driver or any actions, conduct or negligence on the part of the driver. I have highlighted this provision in Exhibit "U".

83. These provisions, if indeed they are enforceable in Ontario, raise very significant issues. Part of the reason that the City licenses taxicabs and limousines is to ensure that taxicabs and limousines drivers and owners are responsible to the people to whom they provide service. This is also why taxicab brokers and limousine service companies are required to provide service to passengers using City-licensed vehicles and to provide the names of their drivers to MLS.

Provincial Legislative Requirements for Taxicabs and other Vehicles for Hire

84. The City's licensing regime for taxicabs and limousines should also be considered in the context of underlying provincial requirements. Specifically, section 39.1 of the *Highway Traffic Act* provides that a driver of a motor vehicle shall not pick up a passenger for the purpose of transporting him or her for compensation where a licence to do so is required by the *Public Vehicles Act* or a municipal by-law, except under the authority of such licence, or permit. The *Public Vehicles Act* also defines a taxicab as a "vehicle with seating capacity for no more than six people, excluding the driver, that is hired for a specific trip to transport a person or group of persons, with one fare or charge only being paid for the trip."

85. By way of contrast, and to assist with putting these requirements into context, the requirements for actual carpooling, or what could be understood as true "ridesharing", are that the driver may only take passengers when: (i) it is incidental to the driver's own purpose for the trip; (ii) the only payments made are contributions to cover the actual costs of the trip, and; (iii) the ride consists of no more than one round trip per day. Actual carpooling is exempt from the City's licensing requirements and from the licensing requirements of the *Public Vehicles Act*.

Outstanding Charges Against Uber and Enforcement Challenges

86. The City has brought this application to restrain Uber's ongoing business operations in the Toronto because Uber is operating in flagrant disregard of the City's licensing regime, even while it aggressively promotes and expands its services and continues to recruit drivers.

87. There are 36 outstanding licensing charges against Uber in respect of its UberTaxi and UberBlack, and UberSUV services relating to 20 interactions between Uber and enforcement staff between April, 2012 and January, 2014. Notwithstanding these charges, Uber has continued to operate in Toronto. Attached as Exhibit "V" to this affidavit is a list of these charges.

88. In addition to continuing to operate these two services, Uber has launched its UberX and UberXL services in flagrant disregard of the City's licensing authority. I and members of my staff have previously met with Uber in an effort to ensure the City's licensing requirements were clearly understood. I ensured that Uber was put on notice that it requires taxicab brokerage and limousine service company licences to operate its business in Toronto, and that the City has significant public safety and legal concerns about its new UberX service in particular.

89. There are many practical difficulties for the City in continuing to prosecute Uber for violations of the City's by-laws on a trip-by-trip basis. One of the major difficulties for the City is that when City enforcement staff register user accounts and request Uber rides, those accounts are de-activated by Uber as soon as it identifies that those user accounts led to charges under the *Municipal Code*. Moreover, vehicles providing services via Uber are not prominently marked as Uber vehicles. It is, therefore, difficult for enforcement officers to identify vehicles on the street as Uber vehicles. As such, the order sought by the City at this time is the only meaningful and appropriate measure to address Uber's ongoing breaches of the City's licensing regime.

90. For the purpose of this application, however, MLS investigative staff have made recent trips using Uber's services to confirm directly that Uber continues to operate as a taxicab broker and limousine service company in the City. Staff with MLS's enforcement unit took rides using UberX on November 3 and 5, 2014, and also took rides using UberXL and UberSUV on November 12, 2014. On each of these occasions, a member of MLS's staff used the Uber application to request a ride from one location in the City to another. The credit card used to establish the user account was billed for the fare by the Uber app. I am advised that the rides MLS investigative staff took using UberX and UberXL were in vehicles not licensed as taxicabs.

91. Given the ease with which MLS staff were able to request rides through Uber and the information I have received about Uber's ongoing promotion and recruitment efforts, including an interview given by Uber's General Manager, Ian Black, on CBC's Metro Morning on November 10, 2014, I believe that Uber is not only continuing to operate, but also making efforts to expand its operations in Toronto. Mr. Black's CBC interview is available on CBC's Metro Morning website at: <http://www.cbc.ca/video/news/audioplayer.html?clipid=2594786833>.

92. The media has widely reported that Uber uses a similar *modus operandi* in other jurisdictions, i.e. Uber commences operations without applying for or obtaining appropriate licences from regulators. Attached as Exhibit "W" are media reports of Uber's unlawful activities in many cities around the world.

93. Within Canada, the City of Toronto is not the only municipality or government concerned about Uber's failure to comply with legal requirements in the jurisdictions in which they operate. I also understand that Uber has or is contemplating launching at least some of its services in Montreal, Ottawa, Calgary, and Vancouver. I know that each of these municipalities also have taxicab and limousine licensing regimes and am advised by my colleagues in these cities that Uber has not applied for or obtained licences to operate in their jurisdictions.

94. I am also advised by my counterpart in the City of Mississauga that Uber is providing services in that municipality without obtaining the required business licences.

95. In this context, clearly the most effective means by which the City can require Uber to comply with the *Municipal Code* is by way of this application. Moreover, as I have said, the City is guided by the principles of consumer protection of its residents and visitors, the health, safety, and well-being of passengers and drivers, and the economic and environmental well-being of the City of Toronto. My concerns about mechanical fitness of vehicles and the adequacy

of Uber drivers insurance coverage are not theoretical problems, but real and urgent in nature. It is an unfortunate reality that the more trips Uber brokers within the City, the greater the likelihood that an Uber driver will be involved in an accident causing serious injury or death.

96. Also, the longer that Uber continues to operate in the City, the greater the potential for damage to the taxi and limousine industries. As I have said, protecting the economic interests of participants within these industries is not the City's role as regulator, but the City has an interest in the long-term sustainability of the industry because it is an important part of the public transportation network. The City wants, among other things, to encourage investment to ensure safe, affordable, and equitable service, increase the number of accessible and fuel-efficient taxicabs, and support other important policy initiatives.

97. I am also concerned about Uber vehicles increasing congestion in Toronto and, particularly, the downtown core, which is a key consideration the City makes when determining the appropriate number of taxicabs. It is important to the economic and environmental well-being of the City and beneficial to public health for the City to reduce vehicular traffic when possible; increasing the number of vehicles operating as taxis and limousines will do the opposite.

98. Therefore, for the protection of public safety, consumers, and the economic and environmental well-being of Toronto, the City is seeking clear direction that Uber must cease its operations immediately. It is important to the City and to the public that the issues raised in this application be determined quickly, on an urgent basis.

Conclusion

99. That Uber is operating as a taxicab brokerage and limousine service company is evident from an examination of how it carries on business. As set out above, Uber collects personal

information from users and processes requests and payment for rides. It also promotes itself to potential passengers by comparing itself to taxicab and limousine services because it advertises that it screens drivers, carries out visual inspections, and makes available commercial insurance coverage for passenger's protection. With respect to drivers, Uber delivers requests for service and processes payments for each trip that is requested and accepted using any of its services. Moreover, like every other taxicab brokerage in the City of which I am aware, Uber takes a fee from the driver for the service it provides. Uber also gathers data to determine when demand is high and imposes surge pricing accordingly.

100. It is ridiculous for Uber to suggest that it is providing "ridesharing" services and attempt to distinguish its business from that of other taxicab brokerages on that basis. Uber drivers are no more "sharing" a ride than any other taxicab or limousine driver in the City taking a passenger from point A to point B at the request of that passenger for a fare.

101. In this context, it is also a fiction to suggest that Uber is acting simply as a technology provider and an intermediary between users and drivers. In fact, the technology that Uber uses in its business operations is not the issue. The issue is that Uber is attempting an end run around the City's licensing requirements by ignoring them. For this reason, a court order restraining Uber's operations in Toronto is necessary to prevent ongoing breaches of the law.

102. I swear this affidavit in support of the City's application to prohibit Uber from continuing to operate in Toronto in contravention of the City's taxicab and limousine licensing by-laws.

SWORN before me at the City of)
Toronto, in the Province of Ontario ,)
this 17th day of November, 2014)



Matthew Cornett
A Commissioner for taking affidavits, etc.



TRACEY COOK