

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

CV-14516288

BETWEEN:

CITY OF TORONTO

Applicant

- and -

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

Respondents

APPLICATION UNDER section 380 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Schedule A, as amended, and rules 14.05(2) and 14.05(3) of the *Rules of Civil Procedure*.

NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come for a hearing before a Judge on _____, the _____ day of _____, 2014, at 10:00 a.m. at 393 University Avenue in Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

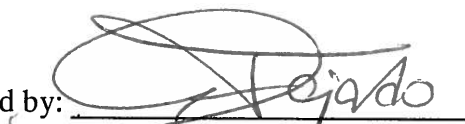
IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES OF THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Dated: November 18, 2014

Issued by:



Local Registrar
393 University Avenue
10th Floor
Toronto, ON
M5G 1T3

TO: **UBER CANADA INC.**
100 King Street West
1 First Canadian Place
Suite 6100
Toronto, ON M5X 1B8

AND TO: **UBER B.V.**
Barbara Strozziilaan 101
1083 HN Amsterdam
The Netherlands

AND TO: **RASIER OPERATIONS B.V.**
Barbara Strozziilaan 101
1083 HN Amsterdam
The Netherlands

APPLICATION

1. The City of Toronto (the "City") makes an application for:
 - (a) a declaration that the respondents, Uber Canada Inc., Uber B.V., and Rasier Operations B.V. (together "Uber"), are operating a taxicab brokerage in the City of Toronto contrary to *City of Toronto Municipal Code*, Chapter 545, Licensing;
 - (b) a declaration that Uber is operating a limousine service company in the City of Toronto contrary to *City of Toronto Municipal Code*, Chapter 545, Licensing;
 - (c) an interim and interlocutory order in the nature of an injunction restraining Uber, its related companies, directors, officers, employees, agents, and assigns from:
 - i. operating a taxicab brokerage and limousine service company in Toronto without valid municipal licences;
 - ii. registering, contracting with or creating accounts for users through the Uber application to arrange or provide transportation or otherwise communicating or exchanging information for the purpose of facilitating transportation from any location within Toronto;
 - iii. recruiting, contracting with, or registering drivers to provide transportation through the Uber application from any location within Toronto; and
 - iv. advertising or promoting the availability of transportation arranged by or facilitated through the Uber application from any location within Toronto;
 - (d) a permanent order in the nature of an injunction restraining Uber, its related companies, directors, officers, employees, agents, and assigns from:
 - i. operating a taxicab brokerage and limousine service company in Toronto without valid municipal licences;

- ii. registering, contracting with or creating accounts for users to arrange or provide rides or communicate or exchange any information and facilitate rides from any location within Toronto, through its application;
 - iii. recruiting, contracting with, or registering drivers to provide transportation originating from any location within Toronto; and
 - iv. advertising or promoting the availability of transportation either arranged or facilitated by Uber from any location within Toronto.
- (e) a mandatory order requiring Uber to prominently post a copy of any interim or permanent order made by this court on its website within two days of such an order being made;
- (f) a mandatory order requiring Uber to deliver an electronic copy of any interim or permanent order made by this court to all Uber user and driver account holders who have taken or provided trips in the Greater Toronto Area within two days of such an order being made;
- (g) costs of this application on a substantial indemnity basis; and
- (h) such further and other relief as counsel may advise and this Court may permit.

2. The grounds for the Application are:

The City's Taxi and Limousine Business Licensing Regime

- (a) pursuant to the *City of Toronto Act*, S.O. 2006, Chapter 11, Schedule A, the City has broad powers to pass by-laws governing business licensing in the City, including the licensing of taxicabs and limousines;
- (b) the City has enacted a licensing regime requiring, among other things, that:
 - i. owners and drivers of taxicabs and limousines have City-issued licences;
 - ii. taxicab brokers accepting requests in any manner for taxicabs used for hire have City-issued licences; and
 - iii. limousine service companies arranging limousine transportation have City-issued licences;to operate in Toronto.
- (c) the City's business licensing regime prohibits taxicab brokers and limousine service companies from arranging transportation:
 - i. in vehicles that are not licensed by the City, and
 - ii. in vehicles driven by people without valid City-issued taxicab or limousine driver's licences;
- (d) in accordance with this authority to licence businesses and its authority to enact by-laws for the purposes of consumer protection, the economic and environmental well-being of the City, and the health, safety and well-being of people, the City's licensing regime requires that, among other things:
 - i. taxicab and limousine drivers complete a training course;
 - ii. vehicles used as taxicabs or limousines pass mechanical inspections and be equipped with certain safety equipment;

- iii. vehicle owners have comprehensive insurance policies (with minimum coverage of \$2,000,000) and have deposited a copy of their certificates of insurance with the City; and
- iv. the fares or rates charged for taxicab or limousine rides are in accordance with a fee schedule established by the City.

Uber Operates as a Taxicab Brokerage and Limousine Service Company Without a Licence

- (e) Uber carries on business in Toronto as a taxicab broker and limousine service company;
- (f) Uber is required to have, but has not applied for or received, a limousine service company licence and a taxicab broker licence;
- (g) Uber operates in breach of the City's licensing by-laws insofar as, among other things, it operates as a taxicab brokerage and limousine service company by:
 - i. recruiting, screening, and dispatching City-licensed taxicab and limousine drivers in response to calls for taxicab and limousine service from passengers, which business it carries on under the labels "UberTaxi", "UberBlack" and "UberSUV";
 - ii. recruiting, screening, and dispatching individuals (who are not licensed as taxicab or limousine drivers in Toronto) to drive their personal vehicles (which are not licensed as taxicabs or limousines in Toronto) to provide taxicab or limousine service for passengers who request this service under the labels "UberX" or "UberXL"; and
 - iii. charging passengers for transportation provided to them according to pricing that it determines, which may vary depending upon Uber's

assessment of local demand, and which is not consistent with the taxi fares or minimum limousine rates established by the City;

Uber's Ongoing and Expanded Contravention of the City's Licensing Requirements

- (h) Uber has received specific notice of and has flagrantly disregarded the City's licensing requirements since it commenced its business operations in Toronto;
- (i) Uber's flagrant disregard of the City's licensing requirements is evidenced by the fact that, in September and October, 2014, Uber expanded its operations as a taxicab brokerage by dispatching vehicles not licensed as taxicabs in Toronto and driven by drivers not licensed as taxicab drivers in Toronto, which services Uber offers under the labels "UberX" or "UberXL";
- (j) as of October, 2014, Uber has been charged with 36 by-law offences related to the operation of a limousine service company or taxicab brokerage without a proper municipal licence as a result of the services it offers under the labels "UberTaxi", "UberBlack" and "UberSUV";
- (k) the by-law charges against Uber are still before the Ontario Court of Justice;
- (l) the City applies to restrain Uber's operations in the City because Uber has and is continuing to flout business licensing requirements for taxicab brokerages and limousine service companies as set out in the *City of Toronto Municipal Code*;
- (m) the City has elected to bring this Application to restrain Uber's business operations rather than to continue to lay individual charges;
- (n) Uber is also acting in flagrant disregard of the requirements of section 39.1(3) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, by arranging transportation for

passengers with drivers that it knows do not have valid City licences permitting them to drive a taxicab or limousine and taking payment for these rides;

- (o) Uber's business operations are not saved by the provisions of section 1(2), (3) or (4) of the *Public Vehicles Act*, R.S.O. 1990, c. P.54, insofar as those provisions only permit individuals to car pool and the transportation services that Uber arranges do not satisfy the car pool criteria;
- (p) restraining Uber's operations in Toronto is necessary to mitigate risks to the public (drivers, passengers, and others) who may be adversely impacted by Uber's ongoing operation in contravention of the City's licensing requirements that mandate, among other things, driver training, commercial liability insurance, and vehicle inspections by a designated mechanic to assess mechanical safety;
- (q) restraining Uber's operations in Toronto is also necessary to preserve the integrity and stability of the taxicab and limousine regime in the City as a whole because:
 - i. taxicabs and limousines are an important component of the City's transportation system for the public; and
 - ii. the evisceration of the existing taxicab and limousine service by operators circumventing the regulatory regime will impair the City's ability to achieve policy objectives relating to: public safety; consumer protection, including improved accessibility for disabled passengers; and the economic and environmental well-being of the City;
- (r) *City of Toronto Municipal Code*, Chapter 545, Licensing, §545-1, 2, 124-127, 472, 482, 483, 486, 489, and 490;

- (s) *City of Toronto Act*, 2006, S.O. 2006, Ch. 11, Sched. A, as amended, sections 8, 10, 86, 94, and 380;
- (t) *Highway Traffic Act*, R.S.O. 1990, c.H.8, section 39.1;
- (u) *Public Vehicles Act*, R.S.O. 1990, c.P.54, section 1;
- (v) Rules 14.05(2) and (3) of the *Rules of Civil Procedure*, R.R.O., 1990, Reg. 194;
- (w) Rule 17.02(i) in support of service without leave on the defendants Uber B.V. and Rasier Operations B.V.; and
- (x) such further and other grounds as counsel may advise and this Court may permit.

3. The following documentary evidence will be used at the hearing of the Application:

- (a) Affidavit of Tracey Cook, sworn November 17, 2014, and attached exhibits;
- (b) Affidavit of Steve Reesor, sworn November 17, 2014, and attached exhibits; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

November 18, 2014

CITY SOLICITOR'S OFFICE

City of Toronto, Legal Services
Stn. 1260, Metro Hall
55 John Street, 26th Floor
Toronto, ON M5V 3C6

Michele A. Wright (LSUC #40724W)

Tel: 416-397-5342

Fax: 416-397-5624

Email: mwright4@toronto.ca

Matthew Cornett (LSUC #61820H)

Tel: 416-392-7244

Fax: 416-397-5624

Email: mcornet@toronto.ca

Lawyers for the Applicant

BETWEEN:

CITY OF TORONTO
Applicant

-and-

UBER CANADA INC. et al.
Respondents
CN-14-516283
Court File No.

(Short title of proceedings)

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF APPLICATION

CITY SOLICITOR'S OFFICE

City of Toronto
Stn. 1260, 26th Floor
Metro Hall, 55 John Street
Toronto, ON M5V 3C6

MICHELE A. WRIGHT

LSUC#: 40724W

Tel: 416-397-5342

Fax: 416-397-5624

E-mail: mwright4@toronto.ca

Lawyers for the Applicant