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COURT OF APPEAL FOR ONTARIO

SIMMONS, LANG and ROULEAU JJ.A.

B E T W E E N :	)	
	)	
TORONTO TAXI ALLIANCE INC.	)	**George H. Rust-D'Eye for the respondent**
	)	
Applicant	)	
(Respondent in Appeal)	)	
- and -	)	
	)	
CITY OF TORONTO	)	**Kalli Y. Chapman and Theresa Leitch for the appellant**
	)	
Respondent	)	
(Appellant)	)	
	)	**Heard: September 28, 2005**

On appeal from the judgment of Justice Wailan Low of the Superior Court of Justice dated February 1, 2005.

ROULEAU J.A.:

Overview

[1] This appeal concerns the legality of City of Toronto By-law 906-2003. By-law 906-2003 changed the licencing provisions for the taxi industry by providing that no standard taxicab shall be transferred except to an individual person who is licenced as a taxicab driver. The effect of the by-law is that current owners of standard taxicabs will no longer be able to sell their taxicabs except to an individual who is licenced as a taxicab driver and who owns no other taxicab. Prior to this change, an individual or corporation could, and often did, own a number of standard taxicabs.

[2] The recommendations regarding changes to the licencing provisions were adopted by Toronto city council in November 1998 with the proviso that they would not come into effect for five years. By-law 906-2003, which implemented council's 1998 decision, was brought to council and adopted in September 2003. The by-law took effect on January 1, 2004.

[3] The *Municipal Act, 2001*, S.O. 2001, c. 25 was enacted in 2001 and governs all by-laws enacted from and after January 1, 2003. Section 150 of that Act defines the licencing powers of municipalities and prescribes conditions for the exercise of these powers. In particular, s. 150(2) of the *Municipal Act* requires that licencing powers be exercised only for one of the following purposes:

i. health and safety;

ii. nuisance control; and

iii. consumer protection.

[4] Further, s. 150(4) of the *Municipal Act* requires that before exercising its licencing powers, city council hold at least one public meeting at which any person in attendance "may make representation with respect to the matter". Moreover, s. 150(3) of the *Municipal Act* requires that a licencing by-law include an explanation of the reason for the by-law and how the reason relates to the by-law's purposes under s. 150(2).

[5] On February 1, 2005, the application judge quashed the by-law. She concluded that the requirements of s. 150(4) of the *Municipal Act* had not been met and that the by-law was not enacted for a purpose permitted under s. 150(2) of the *Municipal Act*.

[6] The city appeals from the application judge's decision. For the reasons that follow, I would allow the appeal.

Background

[7] By-law 906-2003 implemented one of several recommendations adopted by city council in November 1998 arising from the October 1998 Report of the Task Force to Review the Taxi Industry. The Task Force was established by city council on April 16, 1998. The procedural history of the Task Force and its October 1998 report form important background to this appeal.

[8] The Task Force was established by the city to respond to concerns about the state of the Toronto taxi industry that were expressed by members of the public and various industry stakeholders. In 1998, there was a widespread and growing frustration about the deteriorating condition of taxicabs and taxicab service. A number of articles appeared in newspapers commenting on the poor state of the industry.

[9] The stated goals of the Task Force were to "propose recommendations, an implementation plan and communication plan that will ensure that the Toronto Taxicab industry:

- provides safe and secure service to the public;
- offers high quality customer service in clean, comfortable taxis;

- employs courteous, knowledgeable and experienced drivers; and
- permits people who work in the system to share fairly in the costs and benefits".

[10] The work of the Task Force proceeded in three phases: research and consultation; analysis; and report and recommendation. The research conducted addressed the best practices and experiences of other jurisdictions in their initiatives to reform troubled taxi industries. Additionally, the Task Force gathered considerable statistical information from Toronto Licencing Commission and the various submissions made to the Task Force. It also consulted extensively with stakeholders and the public.

[11] The recommendations of the Task Force are set out in Part V of the October 1998 Task Force Report. According to the introductory paragraph of Part V, the recommendations combined "regulatory actions with customer service and economic principles to meet the goals of the Task Force" and are "organized by five points to focus on customer service:

1. Create a Taxicab Passenger Bill of Rights
2. Create Ambassador Class Taxicabs
3. Improve Training
4. Improve the Taxicabs
5. Strengthen Enforcement".

[12] The specific recommendation implemented by By-law 906-2003 is contained within the series of recommendations concerning the creation of a new class of taxicabs: "Ambassador taxicabs". In brief, an Ambassador taxicab is an owner-operated taxicab. No one other than the owner can drive an Ambassador taxicab and an Ambassador class taxicab licence cannot be sold. The creation of this new class of taxicab was an important part of the Task Force Report recommendations given that "[S]tatistics show that owner-drivers, with pride of ownership typically provide the best level of customer service". Statistics presented to the Task Force indicated that owner-operated vehicles had a significantly lower failure rate and that owner-operated taxicabs were maintained at a higher quality standard than fleet vehicles.

[13] With the recommendation for the creation of this new class of licence, the Task Force also recommended that existing taxicab owners' licences be grandfathered, that they be called "standard" taxicab licences and that: (a) their transferability remain unchanged for a period of two years; and (b) after two years, these licences could only be transferred to persons holding a valid Toronto taxicab driver's licence who did not currently own a taxicab. The stated intention of this recommendation was "to eliminate passive investors, ensure that all stakeholders are active participants, allow licences to

continue to be transferred or leased, and encourage a trend to an increase in owner-drivers".

[14] The October 1998 Task Force Report was presented in November 1998 to the Emergency and Protective Services Committee ("EPS Committee"), the standing committee of city council then responsible for providing a forum for public participation and for detailed discussion of the city's decision-making on licencing matters[1]. The EPS Committee held a publicly advertised, open meeting to consider the Task Force's Report and recommendations. The respondent, Toronto Taxi Alliance Inc., made submissions to the Task Force and also participated in the EPS Committee meeting. Following its consideration of the matter, the EPS Committee reported to council.

[15] At its meeting of November 25, 26, and 27, 1998, city council adopted, with amendments, the various recommendations of the EPS Committee. Most of the recommendations adopted were implemented almost immediately. The recommendation respecting grandfathering standard taxicab licences and the new restrictions on the transferability of such licences, although adopted, was not implemented at that time. While the original Task Force Report recommendation suggested that the restriction on transferability take effect after two years, city council, on the recommendation of the EPS Committee, changed it to five years.

[16] Five years later, a bill was brought forward to city council to implement council's November 1998 decision and By-law 906-2003 was enacted at council's meeting on September 22, 23, and 24, 2003. This by-law came into force on January 1, 2004.

The *Municipal Act, 2001*, S.O. 2001 Chapter 25

[17] As already noted, s. 150 of the *Municipal Act, 2001*, S.O. 2001, c. 25 applies to by-laws adopted on or after January 1, 2003. Subsections 150(1) to (4) read as follows:

[1] City of Toronto By-law No. 23-1998 ss. 84(1)(b), 89 and 89.1.

General licensing powers

150. (1) Subject to the *Theatres Act* and the *Retail Business Holidays Act*, a local municipality may license, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality.

Purposes

(2) Except as otherwise provided, a municipality may only exercise its licensing powers under this section, including imposing conditions, for one or more of the following purposes:

1. Health and safety.
2. Nuisance control.
3. Consumer protection.

Explanation

(3) A by-law licensing or imposing any condition on any business or class of business passed after this section comes into force shall include an explanation as to the reason why the municipality is licensing it or imposing the conditions and how that reason relates to the purposes under subsection (2).

Pouvoirs généraux en matière de permis

150 (1) Sous réserve de la *Loi sur les cinémas* et de la *Loi sur les jours fériés dans le commerce de détail*, une municipalité locale peut exiger un permis pour une entreprise exploitée entièrement ou en partie dans la municipalité, même si elle l'est à partir d'un endroit situé à l'extérieur de la municipalité, et réglementer et régir cette entreprise.

Objets

(2) Sauf disposition contraire, une municipalité ne peut exercer les pouvoirs en matière de permis que lui confère le présent article, y compris l'imposition de conditions, qu'à l'une ou plusieurs des fins suivantes :

1. La santé et la sécurité
2. La lutte contre les nuisances.
3. La protection des consommateurs.

Explication

(3) Le règlement municipal exigeant un permis pour une entreprise ou une catégorie d'entreprises ou

Notice

(4) Before passing a by-law under this section, the council of the municipality shall, except in the case of emergency,

(a) hold at least one public meeting at which any person who attends has an opportunity to make representation with respect to the matter;

and

(b) ensure that notice of the public meeting is given.

imposant des conditions à une telle entreprise ou catégorie qui est adopté après l'entrée en vigueur du présent article contient une explication des motifs pour lesquels la municipalité exige un permis à leur égard ou leur impose des conditions et de la manière dont ceux-ci ont trait aux objets visés au paragraphe (2).

Avis

(4) Avant d'adopter un règlement en vertu du présent article, le conseil de la municipalité fait ce qui suit, sauf dans une situation d'urgence :

a) il tient au moins une réunion publique au cours de laquelle toute personne qui y assiste a l'occasion de présenter des observations au sujet de la question;

b) il veille à ce qu'un avis de la réunion soit donné.

The application judge's reasons

[18] The application judge quashed By-law 906-2003 on two bases. First, she found that before passing By-law 906-2003, the city did not comply with subsection 150(4) of the *Municipal Act, 2001*, which requires that, prior to passing a licencing by-law, a public meeting be held on notice at which any person who attends has an opportunity to make representation with respect to the matter.

[19] In particular, she rejected the city's submission that the Task Force meetings as well as the subsequent EPS Committee meeting constituted substantial compliance with s. 150(4) of the *Municipal Act*. She said:

> In my view, the opportunity given to members of the public including the applicant, to make representations in connection with the mandate of the Task Force is not sufficient compliance with the statute.
>
> A report is not a proposed by-law. It may be accepted by council or not. Even if accepted, some or all

> recommendations within a report may not necessarily be translated into action by way of a by-law either within a foreseeable future or at all. There cannot be meaningful consideration of a proposed by-law by members of the public in the absence of disclosure of the proposed content or text of the proposed by-law.
>
> The procedure set out in subsection 150(4) of the statute was mandatory when the City passed By-law 905-2003 but it was not in effect in 1998. Therefore to the extent that there were acts done by council or a committee thereof that resembled acts done in compliance with the statute, the resemblance would have been merely fortuitous. The statute carves out an exception in cases of emergency, but that exception does not apply here. In my view, there was not compliance with subsection 150(4) of the *Municipal Act, 2001*, and the by-law ought for that reason to be quashed[2].

[20] Second, the application judge held that By-law 906-2003 was not enacted for one of the purposes set out in s. 150(2). Specifically, it was not enacted for health and safety or for consumer protection. In this regard, the application judge considered the preamble of the by-law, the discussions of council, the information council had before it, as well as the effects of the by-law and concluded that the by-law was enacted for the purpose of changing the economic structure of the taxi industry.

[21] The preamble of the by-law provides as follows:

> WHEREAS Section 150 of the *Municipal Act, 2001*, grants local municipalities the authority to license, regulate and govern any business wholly or partly carried on within the municipality for purposes of health and safety, consumer protection and/or nuisance control; and
>
> WHEREAS the Council of the City of Toronto has deemed that limiting the transferability of standard taxicab owner's licences to individual persons holding a valid Toronto taxicab driver's licence will result in more direct and active participation in the taxicab industry by owners of taxicabs; and

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[2] *Toronto Taxi Alliance Inc. v. Toronto (City)* (2005), 74 O.R. (3d) 477 at paras. 23-25.

> WHEREAS the Council of the City of Toronto has deemed that direct and active participation in the taxicab industry by owners is desirable for the protection of consumers and the health and safety of residents in the municipality;

[22] The application judge found that the use of the word "deemed" in the preamble was ambiguous because:

> … it is unclear whether council intends by the recital to assert that it has been persuaded by studies and information in its possession that enhanced consumer protection and health and safety will actually flow from the effect of the by-law, or whether council is acting not from data collected but rather by deeming, in the sense of 'treating', the result to be one which follows from the premise[3].

[23] In addition, the application judge stated that "[t]he recital is unhelpful because [it is] ambiguous but would not be conclusive in any event"[4].

[24] Concerning discussions of council, the application judge found the minutes of the September 2003 council meeting unhelpful and found that the discussion recorded in the minutes of the November 1998 council meeting focused on reshaping the industry into one with fewer passive investors. She concluded that the concerns addressed at the 1998 meeting were primarily economic.

[25] As for the information council had before it in 2003, the application judge referred to the October 1998 Task Force Report, the final Task Force Report as adopted at the November 25, 1998 council meeting and the April 11, 2003 report of the city solicitor to council[5]. The application judge held that "The reports of the Task Force are … the best evidence of the purposes of council in enacting the by-law". She noted that the foreword of the October 1998 report states:

> The purpose of the review is to consider the financial and legal aspects of the industry as presented in various reports and submissions to the Task Force, and provide recommendations to meet the prescribed goals of the Task Force.[6]

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[3] *Ibid* at para. 27
[4] *Ibid* at para. 27
[5] I have concluded that the April 11, 2003 solicitor's report did not relate to By-law 906-2003 and therefore was an irrelevant consideration.
[6] *Ibid* para. 35

[26] The application judge found that:

> While there is undeniably a motif running through both versions of the report to the effect that a strong and efficient taxi industry in which active participants are able to earn a reasonable income is in the public interest, neither the purposes of the study nor the purposes of the recommendations are directly aimed at enhancing health and safety or consumer protection.[7]

[27] The application judge went on to find that:

> What is absent from the material is any comparative study of the incidence of harm to the public (whether of physical, monetary or other nature) caused by taxicab drivers driving a vehicle not owned by them as opposed to those driving a self-owned vehicle[8].

[28] Concerning the effect of the by-law, the application judge said:

> Finally, what is the direct effect of the by-law? While By-law 906-2003 may have a multiplicity of effects, some direct, some not, some immediate, and some remote, it is evident that its direct effects are 1. to deny to new owners of taxicabs that limited liability afforded by corporate ownership, 2. to break up fleets and 3. to eliminate, at least in some cases, one or more layers of middlemen in the chain between the owner of the capital asset and the labour driving the cab.
>
> What is not evident is the rational link between consumer protection and public health and safety and 1. the form of ownership of standard taxicabs and 2. the restriction to ownership of a single taxicab by any owner[9].

[29] The application judge concluded:

> The primary purpose of the by-law appears to have been to re-engineer the taxicab industry in order to eliminate middlemen and to redistribute revenues generated by the industry in favour of active participants. While council may have been well-intentioned in seeking to balance the interests

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[7] *Ibid* para. 43
[8] *Ibid* para. 44
[9] *Ibid* paras. 45-46

> of conflicting industry participants as well as the public interest, all in the context of a monopoly where certain players have acquired vested interests and others struggle to enter, the purpose of the by-law was not, in my view, one of the permitted purposes set out in section 150(2) of the *Municipal Act, 2001*[10].

i) Does the by-law comply with s. 150(4) of the *Municipal Act*?

[30] The respondent maintains that the application judge was correct and that a consultation and public meeting held five years prior to the passage of the by-law does not meet the requirements of s. 150(4). Specifically, it submits that the 1998 consultation did not meet the requirements of s. 150(4) because:

1. the consultation was too broad to allow for meaningful input;
2. the consultation was simply fortuitous and could not constitute compliance with a subsequently adopted and specifically defined statutory obligation to consult; and
3. the context for the 1998 consultation was different from the context which existed in 2003. In the intervening period, the new *Municipal Act* was enacted and significant changes in the taxi industry had occurred due in large part to the implementation of many of the Task Force recommendations.

[31] In my view, the application judge erred in her interpretation and application of s. 150(4) of the *Municipal Act*. The requirement in s. 150(4) of the *Municipal Act* for a public meeting concerning the subject matter of By-law 906-2003 was met. In particular, in the present case, there is ample evidence that the subject matter of By-law 906-2003 was contained in specific recommendations made to the EPS Committee of city council. As already noted, the EPS Committee was, in 1998, the standing committee of city council charged with the responsibility of providing the forum for public consultation. The public had proper notice of the EPS Committee meeting and of the changes being proposed to the licencing by-law and had the opportunity to make submissions on the matter to this committee at a public meeting held for that purpose.

[32] The respondent suggested that, to be meaningful, the text of the by-law must be made the subject of public consultation. I disagree. If it had been the intention of the drafters of s. 150(4) to require that the draft text of the by-law be made the subject of the

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[10] *Ibid* para. 50

public consultation, they would have used language similar to that used in s. 210 of the *Municipal Act, 2001*, dealing with by-laws respecting business improvement areas where it is set out that "Notice of the proposed by-law" has to be sent. Section 150(4) does not use similar language, but rather provides for a public meeting to allow "representation with respect to the matter" to be made.

[33] Further, to interpret s. 150(4) as requiring that the specific text of the proposed by-law be the subject of public consultation would unduly restrict the ability of city council to decide what, if any, by-law should be adopted with respect to a matter after having received and considered the representations. Such a literal interpretation would require city council to hold further public meetings giving notice of the new text it proposed whenever it made changes as a result of the earlier consultation process.

[34] I see no merit to the suggestion that, because the public consultation in this case was carried out before the enactment of s. 150(4), it is to be disregarded and deemed not to be in compliance with the requirements of the subsection. The public consultation carried out in the present case was precisely the type of consultation required by s. 150(4).

[35] The delay and changes in the governing legislation between the 1998 public consultation that occurred in this case and the 2003 adoption of the by-law as well as the changes in the industry in the intervening period are important factors to consider.

[36] Although there were changes in the taxi industry between 1998 and 2003, the significant changes resulted directly from the implementation of the Task Force recommendations. It was clear from the outset that the recommendation later implemented by By-law 906-2003 was only one part of the comprehensive package of regulatory reforms contemplated by the Task Force. As set out in the report "[t]he solution proposed is a comprehensive package of recommendations" and that "[t]ogether, the recommendations meet the overall intentions of the guiding principles and goals of the Task Force. As such, each recommendation is intertwined with others…".

[37] The delay was contemplated from the outset. It was set out in the recommendations that were the subject of public consultation and was a term of the report as adopted by city council. With respect to the changes in legislation, I have already concluded that the public consultation that occurred in this case met the requirements of the new legislation.

[38] As a result, on the facts of this case, I do not consider that the passage of time and the changes in the industry gave rise to an obligation to hold a new round of public consultations.

ii) Was the by-law enacted for the purpose of health and safety or consumer protection?

[39] The application judge found that By-law 906-2003 was adopted for a purpose other than those listed in s. 150(2) and quashed the by-law as being outside the city's statutory authority.

[40] The application judge referred to the purpose set out in the preamble, the effect of the by-law and the discussions recorded in the minutes of city council. It is apparent that her interpretation of these documents and her ultimate conclusion flowed from her interpretation of the Task Force Report. She acknowledged that the Report had noted the decline in customer service and in taxicab quality and that the Report observed that there was a lower vehicle inspection failure rate among owner driven taxicabs. Postulating that the Report had linked driver ownership of the taxicabs with greater safety, she went on to find that:

1. the by-law did not require the owner of a standard taxicab licence to be the driver; and
2. the report "spoke predominantly if not overwhelmingly to economic considerations as they affect industry participants".

[41] This led the application judge to the conclusion that the purpose of the by-law was "to re-engineer the taxicab industry in order to eliminate middlemen and to redistribute revenues generated by the industry in favour of active participants",[11] which is not an authorized purpose under s. 150(2).

[42] With respect, it is my view that the application judge erred in reaching this conclusion and that this constituted a palpable and overriding error. In reaching her conclusion, the application judge focused on only one of the many recommendations of the Task Force to the exclusion of the others. Her approach in seeking to match only one isolated recommendation to one of the Task Force's objectives was not the correct one in the circumstances.

[43] The city had identified a problem with the industry and established several objectives. The Task Force was set up to propose a solution. It determined that there was a link between the Toronto Taxicab Industry structure and the quality of taxicabs. The Task Force noted a relationship between owner-operated taxicabs and higher standards of service and safety. The solution it recommended consisted of a comprehensive set of recommendations. In the circumstances, the report and its recommendations must be viewed as a whole – namely, as an integrated approach to solving the problem. Each recommendation cannot be viewed in isolation from the other recommendations.

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[11] *Ibid* at para. 50.

[44] Although the Task Force report speaks of favouring active participants such as owner-drivers, it is apparent from a full reading of the report that the restructuring of the participants in the industry is seen as a means to enhance consumer protection and improve health and safety. The report provides a factual basis for and demonstrates a rational connection between the means chosen, ownership by licenced drivers, and the objectives sought, improving health and safety and consumer protection. Although neither the Task Force nor city council could point to a statistical study specifically showing a direct relationship between the means adopted and the objectives sought, in the face of other evidence before the Task Force such a specific study was not necessary to establish jurisdiction.

[45] Further, the Task Force recognized that the new restrictions on the transferability of standard taxicab licences were not the ideal solution as they fell short of imposing on standard taxicab licences the owner/driver requirement that applies to the Ambassador class of licence. However, in order to limit the negative impact on existing standard taxicab licence holders, the Task Force adopted this compromise and, in addition, provided for a delay in the implementation of the recommended changes. Accordingly, although the changes fall short of requiring the owner to drive the taxicab, the Task Force concluded that they will "encourage a trend to an increase in owner-drivers" and therefore, result in greater involvement of licenced drivers in the ownership and operation of standard taxicabs. This would in turn lead to safer taxicabs offering better service to the consumer.

[46] A reviewing court should not second-guess the municipality as to whether the by-law will be more or less effective in achieving the intended purpose or purposes. As set out in *Nanaimo (City) v. The Rascal Trucking Ltd*., [2000] 1 S.C.R. 342 at p. 358 (Quoting with approval *Shell Canada v. Vancouver (City)*, [1994] 1 S.C.R. 231):

> …[C]ourts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens of those municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts must not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction"…and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not usurp the legitimate role of municipal bodies as community representatives.

[47] In the result, I conclude that the purposes of the by-law are health and safety and consumer protection. This is the intention set out in the preamble to the by-law and the Task Force report, taken as a whole, amply confirms this.

iii) Does the by-law comply with s. 150(3) of the *Municipal Act*?

[48] The respondent contends that the application judge correctly quashed By-law 906-2003 on a third basis, namely, that the by-law does not meet the requirements of s. 150(3) of the *Municipal Act*. The respondent argues that the preamble to the by-law did not explain either the reason for the by-law or how that reason related to one of the three permitted purposes.

[49] I disagree with both aspects of the respondent's submission. Read fairly, the application judge's reasons indicate only that she found the explanation contained in the preamble to the by-law ambiguous and unhelpful in assessing compliance with s. 150(2). She did not purport to quash the by-law based on non-compliance with s. 150(3).

[50] Further, as I have already explained, the application judge erred when she focused on one of the recommendations of the Task Force to the exclusion of the others and on the absence of a study confirming a relationship between the objectives and the means adopted by city council to accomplish these objectives. Contrary to the application judge's finding that the preamble to By-law 906-2003 is ambiguous, the preamble sets out concisely the essence of the Task Force's conclusion. Moreover, read as a whole, it meets the requirements of s. 150(3) of the *Municipal Act* because it gave the reasons for the change and tied those reasons to consumer protection and health and safety.

iv) Other grounds of illegality raised by the respondent

[51] The respondent maintains that, by stipulating that only licenced drivers can acquire a taxi licence, By-law 906-2003 improperly discriminates against corporations. Further, it argues that, by preventing those who wish to participate in the taxicab industry from doing so in a corporate capacity and by placing arbitrary restrictions on the transferability of the licences, the by-law unlawfully interferes with the contractual and financial relationships and arrangements of the licence holders.

[52] The appellant points out that the Ambassador class of taxi licence which has been in place since 1998 does not allow corporate ownership of the licence. The changes brought about by By-law 906-2003 bring the standard taxicab class of licence more into line with the Ambassador class. It also submits that the requirement that taxicab licences be acquired by licenced drivers and not corporations or unlicenced individuals, is rationally connected to the objectives of health and safety and consumer protection. The by-law requires that persons seeking to acquire a taxicab licence be licenced taxicab drivers, as these persons will have passed a training course and fulfilled several other requirements under the licencing by-law. This requirement will also encourage more

owner-operators in the industry. The discrimination against corporations and the interference in the contractual and financial decisions of licence holders is an indirect effect and is incidental to achieving the proper purpose of the by-law.

[53] I agree with the appellant. As I have determined the by-law was passed for a proper purpose, the fact that it differentiates between individuals and corporations and interferes to some extent with the contractual and financial decision making of licence holders does not render the by-law invalid (see the *Municipal Act, 2001*, s. 10, *Re Christy Taxi Ltd. and Doran* (1975), 10 O.R. (2d) 313 (C.A.) at 320 and *United Taxi Drivers' v. The Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485 at para. 16).

Disposition

[54] For these reasons, I would allow the appeal and set aside the order of the application judge.

[55] I would award the appellant costs of the appeal fixed at $10,000 as well as costs of the application fixed at $20,000 both inclusive of GST and disbursements.

RELEASED: "December 20 2005"

"Paul Rouleau J.A."
"I agree J. M. Simmons J.A."
"I agree S.E. Lang J.A."