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Uber Lives to Ride Another Day

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Case Commented On: *Edmonton (City) v Uber Canada Inc.*, [2015 ABQB 214](#)

As a result of Uber's activation in Edmonton, the City of Edmonton brought an application for a statutory interlocutory injunction, enjoining Uber Canada Inc. ("Uber Canada") from conducting business in Edmonton without a valid business license or taxi broker license. The City did not name Uber B.V. or Rasier Operations B.V. (collectively, "Uber Companies"), the larger corporate affiliates associated with Uber Canada, in the action. In short, the City's application was dismissed as it failed to establish a clear and continuing breach of the relevant Bylaws by Uber Canada, and it neglected to name the right entity to be enjoined (see *Edmonton (City) v Uber Canada Inc.*, [2015 ABQB 214](#)). This was one of the first legal challenges to the crowd favoured App within Canada and it will likely have a wide impact on the development and approach of Uber in other municipalities.

Background

Uber operates a software application (or "App") based business. This App is a digital platform which enables riders to request rides, track their drivers, pay electronically and automatically, and rate their service upon conclusion. For more information on Uber and its services, see my earlier post "[Uber & Calgary – A Modern Day Romeo & Juliet](#)".

In this case, the City of Edmonton considered Uber to be operating as a taxi broker, and thus in violation of City bylaws as it did not have a taxi or business license.

Section 7 of the *Municipal Government Act*, RSA 2000, c M-26 permits a municipality to pass bylaws for municipal purposes such as transport, transportation services, business, and business activities.

On the above application, there were two issues before the Court:

1. Whether the City had established that Uber Canada Inc. has *prima facie* engaged in activities that are in clear and continuous breach of the referenced bylaws.
2. Whether the City had named the right entity to be enjoined.

Arguments

The City of Edmonton

The City argued that Uber Canada causes and permits the operation of vehicles for hire and acts as a dispatching taxi service, both actions requiring a license. The City argued that because Uber Canada has the power to deactivate driver accounts, it should be enjoined from conducting business in Edmonton and forced to deactivate those accounts so that drivers could not receive ride requests.

The City further argued that it was adequate to name Uber Canada as the sole party because it was a registered business within Canada, and the Uber Companies were operating through it.

Uber Canada Inc.

Uber Canada argued it does not operate a business or provide dispatch services as it does not control the activities of drivers, is not party to affiliate agreements, and does not actually pair drivers with riders. Riders request rides through the App and a driver is automatically and electronically designated. Uber Canada cannot control whether the driver chooses to provide the service.

Uber Canada argued the City was dutifully informed regarding the existence of the Uber Companies and their role in contracting and licensing with drivers. Each driver is the owner of their vehicle, not Uber Canada, nor does Uber Canada own the computer servers used to operate the App network.

Analysis

In her opening analysis, Madam Justice M.G. Crighton stated (at para 23) that:

It is trite to say that individuals worldwide rely every day on the power of the Internet and the speed with which it adapts and responds to changes in its environment. It is not surprising, therefore, that legislation drafted to accommodate a more static, paper and people driven environment, sometimes lags behind the technological response to individual preferences and demands. The City's bylaws may be no different.

The Court reviewed the evidence in regards to collecting fees, bylaw definitions, and the role of Uber Canada in the operation of the App's network.

Collecting Fees

There was no evidence that Uber Canada receives fees in relation to rides within Edmonton. Both the request for a ride and the payment for that service occurs through a computer server which Uber Canada does not own. Uber Canada and the Uber Companies are separate legal entities, and there was no evidence that either entity controls the other.

Bylaws

The City of Edmonton argued that Uber Canada was in violation of sections 2 and 4 of [Bylaw 13138 \(Business Licence Bylaw\)](#), and sections 4, 67, and 68 of [Bylaw 14700 \(Vehicle for Hire Bylaw\)](#).

City of Edmonton Bylaw 13138 requires a person to hold a business license if they engage in or operate a business in the City (section 4). The definition of “business” includes “an activity providing goods or services...” (section 2(a)(iii)). The Court stated that although the Bylaw does not require a business to make a profit through providing goods and services, the activities of providing support, recruitment, and advertising do not constitute carrying on business within the Bylaw’s definition (at para 27).

The Court cited *Club Resorts Ltd v Van Breda*, 2012 SCC 17 at para 87, in regards to internet businesses carrying on business in a jurisdiction, stating, “...Active advertising in the jurisdiction...would not suffice to establish that the defendant is carrying on business there. The notion of carrying on business in the jurisdiction requires some form of actual, not only virtual, presence in the jurisdiction” (at para 30). There was no evidence to indicate how often, or if at all, an employee from Uber Canada is present in Edmonton.

In sum, there was no evidence that Uber Canada received a fee in relation to Edmonton rides, payment occurred through a server that Uber Canada did not own, and Uber Canada merely trained drivers on how to use the App. Furthermore, there was no evidence that this training or recruitment occurred after December 2014. Therefore, the City did not meet its burden to demonstrate, *prima facie*, that Uber Canada was in clear and continuing breach of Bylaw 13138.

Section 4 of Bylaw 14700 states “a person shall not **operate, cause or permit the operation** of a Vehicle for Hire unless it is a Taxi, Limited Taxi, Accessible Taxi, Limousine or Shuttle.”

Section 67 states “a person shall not provide **dispatch services** to any Taxi, Limited Taxi, or Accessible Taxi unless they are a Taxi Broker.”

Although the parties did not dispute that Uber Canada did not drive or have care of the vehicles, the City argued that the definition of “cause” included “to induce”.

Uber performs marketing and promotion, App support, and recruitment. It recruits drivers and trains them to use the App. However, they do not induce or cause the downloading of the App, nor do they have care and control of the decisions of each driver. As a result, the Court found that Uber Canada is not operating or causing a driver to operate for hire (at para 37).

The Court stated that facilitating communication does not amount to “causing” the action to occur. Uber Canada does not own the servers that transmit the rider’s messages. The software is owned by the Uber Companies and Uber Canada at best facilitates its transmission through App support. Once this communication occurs, the driver still makes the ultimate decision. Therefore, Uber Canada does not dispatch or “send anyone anywhere” (at para 44).

On this basis, the City did not meet its burden to demonstrate, *prima facie*, that Uber Canada is in clear and continuing breach of Bylaw 14700.

The Parties

The Court stated that the City “fail[ed] to fully appreciate and account for the actual role played by Uber Canada in the Uber [C]ompanies’ App-based “peer to peer” transportation service” (at para 45). Uber Canada is affiliated, but it does not contract with drivers or have control over the Uber Companies. The Court stated that the City’s approach to excluding the Uber Companies ignored the nature and scope of an internet business and the basic principles of corporate law.

In terms of bylaw enforcement, the City had made little effort to enforce its bylaws against drivers, and failed to name or give notice to the parties that own and license the App itself. The Court interpreted the action as the City asking it to take judicial notice of the fact that drivers who use the App are in contravention of the bylaws, and that through supporting and advertising the App, Uber Canada is also in contravention (at para 50). Even though the City was aware its requested relief would affect interests beyond Uber Canada, it failed to name the Uber Companies or drivers known to it.

Calgary Bylaws

How would this scenario play out in Calgary?

It is of note that the Calgary [*Livery Transport Bylaw 6M2007*](#) uses the language “no Person shall **operate** a motor vehicle in a manner which suggests the Motor Vehicle is for hire...”. “Operate” is defined as “includes having care or control of a Motor Vehicle” (in section 12(jj)). This is a much narrower provision than Edmonton Bylaw 14700, and based on Uber Canada’s argument and success above, it strongly suggests that if Uber Canada was to begin operating in Calgary, it would not be acting in contravention of Bylaw 6M2007 as it does not operate the vehicles, rather, drivers do.

Similar to Bylaw 13813, Calgary’s [*Business License Bylaw 32M98*](#) defines “business” as an activity providing goods or services, and “carrying on” means to operate for a fee (sections 2(f) and 2(g)). It states that “a person shall not carry on a business listed in Part II of this Bylaw unless that person has a valid and subsisting license” (section 3(1)). Again, applying Justice Crighton’s reasoning, Uber Canada would likely be successful in any challenge by the City, as it does not receive a fee and there has been no evidence that it acts as agent for the Uber Companies. As such, its activities would not meet the definition of “carrying on” a business.

Conclusion

The City’s application was dismissed on the basis that it failed to prove a clear and continuing breach of Bylaw 13138 or 14700 by Uber Canada. Promoting, advertising, and recruiting for use of an App do not amount to carrying on a business, especially when the corporation does not receive a fee and lacks any final control over the user.

This is an important case in that the Court mentions the fact that the Bylaws may be out of date, including those relating to the taxi industry. It is clear that the outcry for Uber is becoming louder and more prominent each day, and perhaps this is an example of the Court taking an active approach in attempting to reflect changing social values.

Although the Court dismissed the City's application, it noted a substantial lack of evidence provided to establish the City's arguments. It is questionable whether this evidence exists, or whether the outcome would be the same had the City been able to produce it.

For now, it seems Uber has received its first Canadian break and Edmontonians can use the App to ride another day.

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