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CASE SUMMARY: COURT DISMISSES TAXI COMPANIES JUDICIAL REVIEW CONCERNING DECISIONS OF THE BC PASSENGER TRANSPORTATION BOARD REGARDING RIDE SHARING APPROVALS OF UBER AND LYFT

Court dismisses taxi companies judicial review concerning decisions from a regulatory licensing body regarding ride sharing companies.

Administrative law – Decisions reviewed – Passenger Transportation Board – Judicial review – Standard of review – Patent unreasonableness – Permits and licences – Compliance with legislation

Yellow Cab Co. v. Passenger Transportation Board, [2021] B.C.J. No. 89, 2021 BCSC 86, British Columbia Supreme Court, January 20, 2021, S. Wilkinson J.

The petitioners consisted of nine taxi companies in the City of Vancouver and Metro Vancouver. The petitioners sought a judicial review of two decisions of the respondent, Passenger Transportation Board (the "Board"), granting transportation network services licences to other respondents, Uber Canada Inc. and Lyft Canada Inc. The Board is a regulatory licencing body under the *Passenger Transportation Act*, S.B.C. 2004, c. 39. The Board was responsible for special authorizations in respect of licences for ride hailing. Uber and Lyft applied for licences with special authorizations enabling them to operate ride hailing services in the Lower Mainland of British Columbia.

The Board issued two separate decisions in respect of the application by Uber and Lyft. In both decisions, the Board concluded that there was a public need for ride hailing services, that Uber and Lyft is a "fit and proper person" capable of providing the proposed services, and that the application would promote sound economic conditions in the passenger transportation business. In doing do, the Board observed that it could closely monitor fleet sizes to ensure supply and demand could be balanced.

The Court agreed with the parties that the standard of review was patent unreasonableness by operation of a privative clause in the *Administrative Tribunals Act*. The parties disagreed on the application of Vavilov. In the result, the Court concluded that Vavilov did not impact the meaning of patent unreasonableness as the Supreme Court of Canada's decision only related to reasonableness in administrative decisions.

The Court dismissed the petitioners' argument that the decisions were patently unreasonable. Specifically, the Court held that the decisions clearly contained the Board's reasons for not imposing a term or condition on fleet size. The petitioners' second argument that the Board did not consider the economic harm in granting licences was also dismissed on the basis that each decision devoted a number of paragraphs to indeterminate fleet size that would cause economic harm. The Court observed that the decisions "specifically considered the issue of fleet size and referenced a lack of evidence before it that would support a cap on fleet size but left open the possibility of future review."

The Court held that the decisions were not patently unreasonable. The petition was dismissed.

This case was digested by Jackson C. Doyle, and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Jackson C. Doyle at jdoyle@harpergrey.com.