IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Uber Canada Inc. v. Vancouver (City),* 2025 BCSC 1534

Date: 20250808
Docket: S242743
Registry: Vancouver

Between:

Uber Canada Inc.

Petitioner

And

The City of Vancouver

Respondent

Before: The Honourable Justice Ormiston

Reasons for Judgment

In Chambers

Counsel for the Petitioner:	M.A. Feder, K.C. A. Cocks K. Hanowski
Counsel for the Respondent:	I.K. Dixon W.R. LeBlanc
Place and Date of Hearing:	Vancouver, B.C. February 6, 2025
Place and Date of Judgment:	Vancouver, B.C. August 8, 2025

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I. INTRODUCTION

[1] This petition, brought by Uber Canada Inc., challenges a Vancouver City ("City") bylaw that requires ride-share companies to pay for permits to pick up or drop off passengers in the Metro core of Vancouver between 7:00 a.m. and 10:00 p.m. Application-based ride share providers, like Uber, are regulated as "transportation network services" ("TNS"). The bylaw at issue is s. 21.8 of Vancouver City Bylaw No. 2849, which prohibits TNS vehicles from stopping to pick up or drop off passengers on any City street in the Metro Vancouver core, unless they hold a valid "congestion and curbside management permit". The bylaw allows the City Engineer to charge a set fee for the permit, and the fee is levied per stop within the Metro core during the designated times. Since December 2023, that fee has been $0.25 for zero-emission vehicles, and $0.50 for all other vehicles.

[2] TNS providers are currently authorized to operate in this Province by the Transportation Passenger Board (the "Board"), as are other "passenger directed vehicles", like taxis. However, the bylaw in question does not apply to private vehicles or other types of passenger directed vehicles. The bylaw only applies to vehicles operated by TNS providers.

II. POSITIONS OF THE PARTIES

[3] The petitioner seeks an order declaring s. 21.8 of the bylaw invalid, because it goes beyond what the City has the power to legislate. In other words, the petitioner submits s. 21.8 is "*ultra vires*" the City's authority, and therefore an unreasonable exercise of the City's decision making power.

[4] The petitioner advances three reasons to find the bylaw is *ultra vires*:

> (i) the bylaw regulates TNS vehicles from operating in certain areas of Vancouver at certain times;
>
> (ii) the bylaw fixes charges for TNS vehicles, and;
>
> (iii) the fee charged for the permits is a 'toll' on the use of Vancouver streets.

[5] The petitioner submits the first two reasons render the bylaw an unreasonable exercise of the City's power because the Province of British Columbia (the "Province") has made the Board the centralized authority for regulating TNS. In 2019, the Province made amendments to the *Passenger Transportation Act,* S.B.C. 2004, c. 39 [the "*Act*"] and other statutes granting the Board the power to issue the licences and authorizations required to operate TNS vehicles.[1] The *Act* gives the Board the power to establish terms and conditions of TNS authorizations, including fleet size and the geographical area in which the vehicles can operate.[2] The amendments also establish the Board as the entity that sets, approves, and makes rules about rates to be charged by a TNS licensee.[3] The *Act* requires any person who provides TNS services to charge rates in compliance with the rates set and approved by the Board.[4]

[6] In concert with the amendments to the *Act*, the Province made amendments to the *Vancouver Charter,* S.B.C. 1953, c. 55 [*Charter*] restricting the City's power to regulate the number of vehicles that can operate under a TNS authorization, and restraining the City from prohibiting TNS vehicles from operating in the municipality.[5] The Province also removed the City's power to fix rates charged by vehicles operated under TNS authorizations.[6]

[7] The respondent submits that bylaw s. 21.8 is fully within the statutory authority granted to the City. Specifically, the respondent points to different bylaws that allow the City to issue permits, and also bylaws that allow the City to regulate when and where vehicles, or classes of vehicles, can stop on City streets.[7] The bylaws identified by the respondent were left untouched by the 2019 amendments to the *Charter*. The respondent acknowledges that the *Charter* now prohibits the City from regulating the rates TNS providers charge, and the number of TNS vehicles

[1] Section 23.1 *Passenger Transportation Act*, S.B.C. 2004, c. 39
[2] Section 28(3)(iii) and (iv) *Passenger Transportation Act*, S.B.C. 2004, c. 39
[3] Section 7(1)(f)(g) *Passenger Transportation Act*, S.B.C. 2004, c. 39
[4] Section 23.1(1)(d) *Passenger Transportation Act*, S.B.C. 2004, c. 39
[5] Section 272.1(2)(a)(b) and s. 317.1(4) *Vancouver Charter*
[6] Section 317.1(2) *Vancouver Charter*
[7] Section 317(1)(a)(c)(w) and s. 161A *Vancouver Charter*

operating under authorizations in Vancouver. However, the City says it reasonably decided that s. 21.8 does none of these prohibited things. The respondent points to the fact that the fees for permits under s. 21.8 are charged to TNS providers, and therefore do not prescribe or impose "rates" charged to TNS customers. The respondent also argues that s. 21.8 does not limit or restrict the number of TNS licences, nor does it specify the number of vehicles that can operate under a TNS authorization. The respondent says that it was reasonable for the City to find that the bylaw falls within the City's ability to issue permits and control traffic on City streets in order to address traffic congestion.

[8] The third argument advanced by the petitioner relates to a Vancouver *Charter* prohibition[8] on the City charging tolls for the use of streets in Vancouver, unless specifically provided by a provincial or federal enactment. The petitioner says that the permit fee and area restriction in s. 21.8 operate together to create a toll on the use of Metro Vancouver streets for TNS vehicles. The City responds that the bylaw imposes a permit fee for stopping on certain streets at certain times of day, and that it was reasonable for the City to find this is not the same as a "toll" being charged for the travelling along City streets.

III. LEGAL TEST

[9] The petition requires the court to review the City's decision to enact s. 21.8 of the bylaw, and the parties agree that the standard of review is reasonableness. The guiding legal authority regarding such a review is *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. *Vavilov* establishes that the reasonableness standard remains a robust form of review. While the starting point on a reasonableness review is one of judicial restraint, the review "is not a 'rubber-stamping' process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review." (*Vavilov* at para. 13).

[10] The Court in *Vavilov* describes a reasonable decision as one that is both rational and logical. In addition to the need for internally coherent reasoning, a

[8] Section 199.01(7) *Vancouver Charter*

reasonable decision must be justified in relation to the constellation of law and facts that are relevant to the decision. It follows that a decision will not be reasonable where there is a failure in the rationality that is internal to the reasoning process, or where the decision is untenable in light of the factual and legal constraints that bear upon it (*Vavilov* at para. 102-106).

[11] While *Vavilov* provides a non-exhaustive list of factors for a reviewing court to consider when approaching a reasonableness review, many of them are not applicable in a situation such as this where there are no written reasons for the decision to enact the impugned bylaw. The diversity of administrative decisions is acknowledged in *Vavilov*, and the Court affirms that "reasonableness remains a single standard." It is "the particular context of a decision [that] constrains what will be reasonable for an administrative decision maker to decide in a given case. This is what it means to say that '[r]easonableness is a single standard that takes its colour from the context.'" (*Vavilov* at para. 89).

[12] *Vavilov* contemplates review of municipal decisions where no reasons are available to the court, and remarks that "even in such circumstances the reasoning process that underlies the decision will not usually be opaque," particularly where the court considers the record as a whole to understand the decision and its rationale (at para. 137). The record can include reference to debate, deliberations and the statements of policy giving rise to the bylaw. It can also include reports prepared to brief Council on the proposed bylaw.

[13] *Vavilov* recognizes that in the absence of reasons to review, it is often inevitable that the reviewing court's analysis will focus on the outcome rather than the decision maker's reasoning process. However, even where context does not shed light on a basis for a municipal decision, the reviewing court must examine the decision in light of the relevant constraints on the decision maker to determine whether the decision is reasonable. Significantly, *Vavilov* confirms that while the review may take a different shape than one where there is a record of reasons, it is no less robust (at para. 138).

[14] The B.C. Court of Appeal considered *Vavilov* in the context of municipal decision making in *English v. Richmond (City)*, 2021 BCCA 442. In this case, the Court describes the extent of deference owed to administrative decision makers, particularly where the review is focused on the extent to which an enactment conforms with the statutory scheme in which it was made:

> [61] Because administrative decision makers "receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision": *Vavilov* at para. 108 (emphasis added). Decision makers are not "permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures" (at para. 108). While they "may have considerable discretion in making a particular decision, that decision must ultimately comply 'with the rationale and purview of the statutory scheme under which it is adopted'" (at para. 108, citing *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at paras. 15, 25-28, [2012] 1 S.C.R. 5).
>
> [62] Consequently, an exercise of discretion "must accord with the purposes for which it was given" and "comport with any ... specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion": *Vavilov* at para. 108. Administrative decision makers must not "interpret the scope of [their] own authority beyond what the legislature intended" (at para. 109). They cannot "arrogate powers to themselves that they were never intended to have" (at para. 109). Nor are they entitled to issue a decision that "strays beyond the limits set by the statutory language [they are] interpreting" (at para. 110).
>
> [63] Given these limitations, administrative decision makers that are "constrained by specifically worded statutory provisions ... may find their decisions set aside if they ignore [those] constraints": *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para. 33, leave to appeal granted, [2020] S.C.C.A. No. 392. Paying "mere lip service to text, context and purpose rather than conducting a genuine analysis" may lead to a quashing of the decision (at para. 42). "The same fate will befall an analysis that is expedient, result-oriented or skewed to advance a policy extraneous to the legislation" (at para. 42).

[15] The Court in *English* acknowledges that a reviewing judge cannot supplant the administrative decision with their own. That said, a reviewing court has a “positive obligation to determine whether the interpretation adopted by the decision maker respects its relevant legal constraints” (at para. 66). Given this obligation, a reviewing court can “conduct a preliminary analysis of the text, context and purpose

of contested legislation" without straying into its own *de novo* statutory analysis (*English* at para. 66).

[16] Significantly, the court in *English* does not limit the reviewing court's analysis to whether the impugned decision falls "within a range of reasonable outcomes." The Court expressly finds that *Vavilov's* "recalibrated focus on justification" set a "slightly higher bar" for administrative decision makers (at para. 73). Given the importance *Vavilov* placed on the "demonstrated consistency between the decision maker's statutory interpretation and the text, context and purpose of the governing provision and its scheme, an 'inferior' interpretation is susceptible to being set aside for unreasonableness even though it may be plausible on the face of the enactment", (*English* at para. 74).

[17] On the basis of this authority, a decision can be found to be unreasonable even if the respondent advances a plausible interpretation of the enabling statute; and a decision can be found to be unreasonable even if it falls within a range of reasonable outcomes. *English* establishes that the reasonableness standard "mandates a closer, potentially more incursive form of judicial review, 'requir[ing] that courts defer only to a decision that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.'" (*English* at para. 74).

[18] Concluding their analysis of deference, at para. 75 the Court in *English* cites the concurring reasons of Justices Abella and Karakatsanis in *Vavilov*:

> [294] Deference, however, does not require reviewing courts to shirk their obligation to review the decision. So long as they maintain a respectful attitude, frame the judicial review inquiry properly and demand compelling justification for quashing a decision, reviewing courts are entitled to meaningfully probe an administrative decision. A thorough evaluation by a reviewing court is not "disguised correctness review", as some have used the phrase. Deference, after all, stems from respect, not inattention to detail.

[19] While the parties agree that the foregoing authorities bind this Court, they differ on how to properly frame the judicial review inquiry. The petitioner relies on *Vancouver (City) v. Pender Lodge Holdings Ltd.*, 2024 BCCA 37 [*Pender Lodge*] and

Cowichan Valley (Regional District) v. Wilson, 2023 BCCA 25 [*Cowichan Valley*] in submitting that the issue to be decided is whether the City had the statutory authority to enact the impugned bylaw. The petitioner adopts the language of the Court in *Pender Lodge* (at paras. 3-4) in submitting that if this Court finds the bylaw falls outside of the scope of the City's jurisdiction, it is invalid and the decision to enact the bylaw must be unreasonable.

[20] The respondent contends that framing the issue in this way invites the Court to engage in a correctness review of the City's decision. The respondent relies on *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 where the Court comments on the approach endorsed by the petitioner:

> [60] […] this Court's task on a reasonableness review is not to interpret the relevant legislation and decide if the Impugned Bylaw is *intra vires* the City. That approach would be contrary to *Vavilov*. Rather, this Court's task is to review the City's decision to enact the Impugned Bylaw together with the underlying reasoning and decide if the decision was unreasonable …

[21] *Zeng v. Sechelt (District)*, 2022 BCSC 2378 frames the issue similarly. Instead of asking whether the legislation is *ultra vires*, "reviewing courts are to consider whether there is a reasonable interpretation of the municipality's enabling legislation which would authorize the enactment or decision that is being challenged. If so, the court is to defer to the municipality and should not interfere" (at para. 43).

[22] Having considered the authorities provided, my approach will be governed by *Auer v. Auer*, 2024 SCC 36 where the Supreme Court of Canada applied *Vavilov* in a case where the *vires* of subordinate legislation was also at issue. *Auer* considers the ongoing applicability of the principles from *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64 where the Court established that a successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (*Auer* at para. 29). *Auer* determines that many of the principles established in *Katz Group* continue to apply in assessing the *vires* of subordinate legislation, including the following.

[23] First, regulations benefit from a presumption of regularity and reasonableness. This means that where possible the subordinate legislation is construed in a manner which renders it *intra vires*. Second, the challenged law and the enabling statue are to be interpreted using a 'broad and purposive' approach. Third, the inquiry does not involve assessing the policy merits of the regulations to determine whether they are 'necessary wise or effective in practice.' And finally, the principle that subordinate legislation must be consistent both with specific provisions of the enabling statute, and with its overriding purpose or object, continues to apply (*Auer* at para. 29).

[24] The aspect of the *Katz Group* analysis that the Court in *Auer* finds to be inconsistent with *Vavilov* is a requirement for subordinate legislation to be found 'irrelevant,' 'extraneous' or 'completely unrelated' in order to be found unreasonable. This threshold was found to grant too high a standard of deference to the administrative decision. The Court in *Auer* found instead that the standard of reasonableness allows a reviewing court to "fulfill their duty to ensure administrative decision makers are acting within the scope of their lawful authority" (*Auer* at para. 47).

[25] The Court in *Auer* goes on to directly answer the question facing this Court: How should a reasonableness review of the *vires* of subordinate legislation be conducted under the *Vavilov* framework? First, the bylaw benefits from a presumption of validity. This means the question is not whether the bylaw is reasonable, but rather whether it has been shown to be unreasonable. In the context of assessing the *vires* of the legislation, the question to be answered is: "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility' – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision", (*Auer* at para. 50).

[26] To the extent that any of the authorities cited by the parties appear to frame the issue differently, it is important to read some of the selective quotations in context. For example, on my reading of *Pender Lodge*, the court does not limit the

reasonableness analysis to determining whether the bylaws are *ultra vires*, as the petitioner's submissions at times suggest. While the introductory remarks of the court focus on the determinative issue on appeal, the ensuing analysis informing the decision about whether the bylaws are *ultra vires* shows the court applying the kind of reasonableness analysis endorsed in *Auer* and in the authorities tendered by the respondent.

[27] The decisions relied on by the respondent are also harmonious with *Auer* since they similarly find that reasonableness review is the path by which the court will ultimately decide whether or not the impugned law is *ultra vires*. However, to the extent that cases such as *Zeng* or *Rocky View (County) v. Koebisch*, 2021 ABCA 265 begin the inquiry by asking whether there is any reasonable interpretation of the subordinate legislation that would make it *intra vires*, I return to the importance of our Court of Appeal's decision in *English*. The text, context and purpose of the legal framework are essential in the *Vavilov* analysis. The reasonableness of the impugned bylaw cannot be determined solely on the basis that it falls within a range of reasonable outcomes. The reasonableness of s. 21.8 will be assessed by this Court asking whether the decision to enact s. 21.8 has been shown to be unjustifiable when considered in relation to the factual and legal constraints in this particular case.

IV. THE STATUTORY FRAMEWORK

[28] The impugned bylaw reads:

> **21.8** (1) Except for accessible passenger directed vehicles, a transportation network services provider must not cause, allow, or permit any passenger directed vehicles being operated under the license issued to them under the *Passenger Transportation Act* to stop to pick up or drop off any passengers on any city street within the Metro core between 7:00 a.m. and 10:00 p.m. unless they hold a valid congestion and curbside management permit, in which case the passenger directed vehicles may stop at any place where stopping is permitted within the Metro core between 7:00 a.m. and 10:00 p.m. for the purposes of picking up or dropping off passengers.
>
> (2) The City Engineer may issue a congestion and curbside management permit to a transportation network services provider for a fee of $0.25 per pick up or drop off within the Metro core between 7:00 a.m. and 10:00 p.m. for zero-emission vehicles, and $0.50 per pick up or drop off within the Metro

> core between 7:00 a.m. and 10:00 p.m. for all other passenger directed vehicles, payable monthly at the end of each month in a manner satisfactory to the City Engineer.

[29] The respondent submits that charging such permit fees is authorized by ss. 317(1)(a)(c) and (w) and s. 161A. Section 317(1)(a)(c) and (w) are:

> **317.** (1) The Council may make by-laws
>
> **Regulating traffic**
>
> (a) for regulating pedestrian, vehicular, and other traffic and the stopping, parking and routing of vehicles upon any street or part thereof;
>
> …
>
> **Classification of vehicles**
>
> (c) for defining and establishing different classes of vehicles and making different provisions, including exceptions, for the different classes established, and for making different provisions for different areas, times, conditions or circumstances as described by by-law in the exercise of any of the powers of the Council with respect to the use of streets; [and]
>
> …
>
> **Regulating, stopping, and parking on streets**
>
> (w) for designating streets, or portions of streets, upon which no vehicles shall be stopped or parked or only such vehicles or classes thereof at such times and upon such conditions as may be prescribed, and for delegating to the City Engineer or such other person as shall be named for the purpose all or any of such powers so to designate or prescribe …

[30] Section 161A reads:

> **Permits and delegation of authority to issue permits**
>
> **161A.** (1) A regulatory by-law may provide for regulation by the use of permits and may do one or more of the following:
>
> (a) establish and impose a fee for a permit;
>
> (b) provide for the effective period of a permit;
>
> (c) establish terms and conditions of a permit;
>
> (d) establish terms and conditions that must be met for obtaining, continuing to hold or renewing a permit;

> (e) provide that terms and conditions for a permit may be imposed, the nature of the terms and conditions and who may impose them.

[31] The petitioner submits that s. 317.1 of the *Charter* restricts the City from enacting s. 21.8:

> **Restrictions on authority to regulate in relation to passenger directed vehicles**
>
> **317.1** […]
> (2) The council must not, under section 317(1)(j) … fix charges to be made by passenger directed vehicles operated under passenger directed vehicle authorizations or transportation network services authorizations.

[32] Section 317(1)(j) reads:

> **Charges by carriers**
>
> (j) subject to the provisions of the *Passenger Transportation Act*, for fixing the maximum and minimum charges to be made by such carriers or any class thereof, which charges may be based upon zones or districts designated by by-law …

[33] Section 317.1(4) also restricts the City from regulating the number of vehicles a TNS can operate under its provincially issued authorization:

> (4) The council must not, under section 317 (1) (m), regulate in relation to the number of passenger directed vehicles that may be operated under passenger directed vehicle authorizations or transportation network services authorizations.

[34] Section 317(1)(m) reads:

> **Limiting licences**
>
> (m) for regulating the number of vehicles with respect to which persons may be licensed in any class of carriers …

[35] Counsel has also brought to the court's attention that Bill 13 – 2025: *Miscellaneous Statutes Amendment Act*, 2025 has been passed by the Legislature, amending the *Charter* as follows. Section 317.1 is amended by adding the following subsection:

> (5) For certainty, the restrictions described in this section do not limit an authority of the Council under this Act to require a permit or to establish or impose a fee.

[36] The petitioner also relies on s. 272.1 of the *Charter* which prohibits the City from regulating the number of TNS vehicles being operated:

> **Restrictions on authority to regulate in relation to passenger directed vehicles**
>
> …
>
> **272.1** (2) The council must not, under section 272 (1)(a) or (e) *[by-laws respecting business regulation and licensing]*,
>
> (a) regulate in relation to the number of passenger directed vehicles that may be operated under passenger directed vehicle authorizations or transportation network services authorizations, or
>
> (b) prohibit vehicles referred to in paragraph (a) from operating in the municipality, including, without limitation, by prohibiting the issuance of a licence to a person to operate a vehicle referred to in that paragraph for the sole reason that the person holds a licence, issued by another municipality, to operate the vehicle.

[37] Finally, the petitioner relies on s.199.01 of the *Charter* which prohibits fees that constitute tolls on the use of City streets:

> **City fees**
>
> **199.01** (1) The Council may, by by-law, establish and impose a fee payable in respect of
>
> (a) all or part of a service of the city,
>
> (b) the use of city property, or
>
> (c) the exercise of authority to regulate or impose requirements.
>
> …
>
> (7) The Council may not establish or impose a toll on the use of streets unless specifically provided by a Provincial or federal enactment.

V. ANALYSIS

A. Does the Bylaw Regulate the Number of TNS Vehicles Operating in Vancouver?

[38] Sections 272.1(2) and 317.1(4) of the *Charter* restrict the City from regulating the number of vehicles that can operate under a TNS authorization, including limiting

licences. I agree with the respondent that s. 21.8 does not restrict the issuance of licences, however I find that the bylaw clearly and intentionally regulates the number of vehicles that can be operated under a TNS authorization. This exercise of municipal power is prohibited by s. 317.1(4), which states: “The council must not, under s. 317(1)(m) regulate in relation to the number of passenger directed vehicles that may be operated under […] transportation network services authorizations.”

[39] The respondent makes two arguments in submitting that the City could have reasonably interpreted their statutory constraints in a way that allowed for enactment of the bylaw. First, because the bylaw does not actually restrict or regulate the number of TNS vehicles operating in Vancouver; and second, because the Province selectively decided to limit the City’s business licensing powers, and not their power to regulate where certain classes of vehicles stop on City streets under ss. 317(1)(a)(c) and (w). The latter being the sections the respondent says the City could have invoked to enact the bylaw. I will address these arguments in turn.

[40] In my view, there is no rational pathway for the City to decide s. 21.8 does not regulate the number of TNS vehicles operating in Vancouver. Both the purpose of the bylaw and its plain meaning are logically at odds with such a conclusion. First, limiting the number of TNS vehicles operating in Metro Vancouver was the City’s objective when they decided to enact the bylaw. There is no reasonable way for the City to have decided it could ameliorate traffic congestion without reducing vehicle numbers.

[41] In response to the 2019 amendments, a City Report entitled *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (“the 2019 City Report”) identified areas of concern, including increased vehicle trips and declining reliance on transit and non-vehicle transport. The 2019 City Report recommends the City implement the ‘congestion and curbside’ permit between 7:00 a.m. and 7:00 p.m. “to temper the demand for vehicle-based transportation during

this already congested window."[9] The City's decision to apply the permit fee to TNS vehicles, and not other commercial or passenger vehicles stopping in the Metro core reveals its intention to control TNS operations in the same manner as service area restrictions and vehicle caps, which are the exclusive jurisdiction of the Board.

[42] For example, the 2019 City Report states:

> At this time, the [Congestion and Curbside Management Permit] is only recommended to be required for ride-hailing vehicles since, as of the time of this report, taxis are still limited by boundaries and caps instituted by the [Board]. Should these boundaries and caps change in the future, the applicability of the CCMP to taxis will require re-evaluation.[10]

[43] It is not reasonable for the City to intend to manipulate the availability of TNS vehicles, and to have also decided that the bylaw did not regulate the number of TNS vehicles operating under a given service provider's authorization.

[44] Second, the City's intention to regulate the number of vehicles operating in Metro Vancouver is plainly achieved by the wording of the bylaw itself. Section 21.8 says TNS providers "must not allow […] <u>any</u>" of their vehicles to stop for the purpose of picking up or dropping off passengers in the Metro Vancouver core. While there are exceptions incorporated into the bylaw, if those circumstances are not engaged, then the essential prohibition remains, and the number of vehicles allowed is zero.

[45] The respondent urges the court to find that the City could have reasonably decided that the bylaw does not create a prohibition at all, since it allows any TNS vehicle to conduct its business anywhere, anytime, as long as the TNS provider pays a permit fee. For example, the City has not actually legislated any fleet size caps. Instead, the City has achieved its objective by regulating where and when TNS vehicles licensed by the Province can stop on City streets.

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[9] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 10.

[10] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 11.

[46] This is an untenable interpretation of the bylaw. While the bylaw may not impose an absolute prohibition, it limits the number of TNS vehicles operating in Vancouver to only those that (i) pass through Metro Vancouver without dropping off or picking up passengers, and (ii) those that fall within the prohibition for which the TNS provider agrees to pay a fee.

[47] The evidence before this Court is that stopping to pick up and drop off passengers are essential functions of TNS vehicles. While transporting a passenger is also an essential function, operational boundaries for passenger directed vehicles are defined based on where a vehicle stops to pick up a passenger. I cannot find that the City could reasonably decide the bylaw does not regulate the number of TNS vehicles operating under an authorization in Vancouver, even if the bylaw includes exceptions to the prohibition.

[48] While it is theoretically possible for the City to have decided it could regulate some places where TNS vehicles stop without regulating the number of TNS vehicles operating under a provincial authorization, that is not what was done in this particular bylaw. By restricting the operating area of TNS vehicles and prohibiting essential functions of TNS vehicles across the entire Metro Vancouver core for 15 high-demand hours in any 24-hour period, there is no reasonable way the City could decide it was not regulating the number of TNS vehicles operating in the City. In fact, there is compelling evidence that this was precisely what the City set out to do. The resulting bylaw imposes significant limitations on the unfettered supply allowed by the provincial Board, with the option for TNS providers to pay to increase it.

B. Does the Bylaw Fix Rates?

[49] Section 21.8 does one of two things: Either, a TNS provider refuses to pay the permit fee, in which case the bylaw restricts the operation of TNS vehicles in Metro Vancouver during the prohibited times; or, the TNS provider pays the permit fees for its vehicles to pick up and drop off passengers in which case the supply of TNS vehicles is not necessarily reduced. The respondent emphasizes the latter

scenario in arguing that the bylaw could reasonably be interpreted as not interfering with TNS supply.

[50] The only way the City could reasonably decide the bylaw does not impact the number of TNS vehicles in operation, would be if the permit fees were paid. While the respondent is correct in saying that the bylaw does not directly prescribe a charge that TNS vehicles must collect from their passengers, the bylaw would be rendered meaningless if the TNS provider did not pass at least some of the permit fee on to their customers. The decision to enact the bylaw is only rational if s. 21.8 does one of two things: either exerts financial pressure on the TNS provider to reduce the number of vehicles in operation, or exerts financial pressure on the end consumer when the TNS provider passes all or some of the permit fee on to them.

[51] While a permit fee could conceivably be different than a “rate” charged to the consumer, I am satisfied based on how the City decided to craft this bylaw, that the purpose of the bylaw could only be met if the permit fee is levied as a “rate” as defined in s. 1 of the *Act*. A “rate” is not limited to the fare charged by the licensee, it includes ‘any other fares, fees or charges’ collected for the transportation of passengers. It is not logical or reasonable to decide a fee for stopping to commence or complete that transportation would not fall within this definition. In my view, it was unreasonable for the City to decide that a fee for TNS vehicles doing business in the Metro core did not constitute the kind of “minimum charge … based upon zones or districts” that the City is expressly prohibited from imposing under s. 317.1(2).

[52] In order to be logically coherent, the City must have decided to impose a permit fee that would be passed on to customers. This is the only way of meeting the City’s stated objective of influencing consumer choices about modes of transportation. The June 2019 City Report acknowledges this reality when it states: “If approved by Council, permit fees will be paid directly by the ride-share companies post-event. It is expected that the ride-hailing companies will incorporate the fee

directly into their mobile applications."[11] The report goes on to highlight how the hours in which the fee applies will not be "adding any additional cost barriers to ride-hailing activity that serves late night demand. During late night periods, many individuals may rely on these services to avoid impaired driving or to avoid situations on the transportation network which they believe to be unsafe."[12] This context sheds light on how s. 21.8 was intended to operate, and shows that the bylaw could only meet its stated purpose if the City exercised authority the Province intentionally centralized in the Board.

C. Is the Regulation Reasonable?

[53] The respondent submits that to the extent the bylaw does regulate how TNS vehicles operate in Vancouver, the City could reasonably decide to do so under powers that the Province left in tact after the 2019 amendments. The reasonableness of this interpretation hinges on the respondent's position that the City could have decided that it was not exercising power that was removed when s. 317.1(4) and s. 272.1 were enacted. Sections 317.1(4) and 272.1 only restrict the City's powers under specific sections: s. 317(1)(m), which otherwise allows the City to "regulate the number of vehicles with respect to which persons may be licensed in any class of carriers"; and ss. 272(1)(a) and (e) which allow the City to grant business licences. The respondent submits that because the bylaw does not necessarily rely on the City's licensing powers it is reasonable to regulate the number of TNS vehicles operating in the City in other ways.

[54] Specifically, the respondent identifies powers under sub-sections of the same provision, ss. 317(1)(a)(c) and (w), which collectively allow the City to regulate traffic, including by placing conditions on the stopping of classes of vehicles on any street. The respondent also suggests the City's reasoning is consistent with the recent

[11] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 11.
[12] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 10.

addition of s. 317.1(5) of the *Charter*, which makes clear that the Province did not intend to limit the authority of the City to require a permit or impose a fee.

[55] I must respectfully disagree with the respondent's argument in this regard. Such reasoning misapprehends the powers engaged. The respondent's interpretation would also require the City to have made a decision based on logical inconsistencies within the *Charter*, in addition to making a decision that fundamentally undermines the purpose of the legislation.

[56] First, with respect to the municipal powers engaged by s. 21.8, the petitioner has pointed to compelling evidence that the City must have decided to invoke their licencing powers to enact this bylaw. The 2019 City Report made recommendations based on how the City could use its "business licencing and street management powers to address issues left unaddressed by the Province." [Emphasis added.] Specifically, the 2019 City Report notes that a "key condition" of a TNS business licence is the requirement for TNS companies to comply with s. 21.8[13]. Reliance on municipal licencing powers brings the decision within the ambit of powers the Province removed by legislating ss. 317.1(4) and 272.1.

[57] The respondent maintains despite the reasoning in the 2019 City Report, Council could nevertheless have reasonably decided the bylaw does not engage the limitations established in ss. 317.1(4) and 272.1, because it could achieve the same result without relying on the specific powers that those sections curtail. Even if one starts from the premise that the City decided it could rely solely on its powers under ss. 317(a)(c) and (w), there is no legal or logical pathway for the City to have found that the bylaw does not transgress the limitations imposed by the 2019 amendments.

[58] First, I cannot find that the restrictions on the City's powers can be reasonably considered as narrow as the respondent suggests. If the City decided it was not running afoul of s. 272.1 because it was not restricting the issuance of licences, this

[13] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 2-3.

still does not account for the subtly different powers that are restricted by s. 317.1(4). This sub-section does not limit the City's power to issue licences, rather, it restricts the City from imposing *limits* on licences by regulating the number of vehicles with respect to which persons may be licensed in a particular class of carriers. As the heading to s. 317(1)(m) suggests, the power being removed in this sub-section is the City's domain over 'limiting licences.' Until s. 317.1(4) was enacted, s. 317(1)(m) would have allowed the City to restrict the number of TNS vehicles operating under a validly issued licence.

[59] Both s. 272.1 and s. 317.1 tell the City it cannot regulate in relation to the number of vehicles operating under a TNS authorization. It would be redundant to interpret the two distinct sections as doing exactly the same thing. A plain reading of the two sections does reveal a distinction. While s. 272.1 limits the City's ability to grant licences, s. 317.1(4) limits the City's ability to regulate the number of licensed vehicles in any class of carriers. A decision that the City was authorized to engage its power under ss. 317(1)(a)(c) and (w) in a way that limits the number of TNS vehicles operating under a valid TNS licence would create an insurmountable legal inconsistency within s. 317 of the *Charter*. I cannot find such an interpretation to be reasonable.

[60] Not only did the Province remove the City's power under s. 317(1)(m), which otherwise allows the City to limit the number of vehicles for which a carrier can be licenced, but the text of s. 272.1 also indicates the extent of the restrictions on the City's power to regulate the supply of TNS vehicles. While s. 272.1 says that the City may not use its powers related to business licensing to regulate the number of TNS vehicles that can operate under an authorization, ss. (2)(b) says that the City cannot prohibit TNS vehicles from operating in the City "including, without limitation, by prohibiting the issuance of a licence to a person to operate a vehicle referred to in that paragraph for the sole reason that the person holds a licence, issued by another municipality, to operate the vehicle." [Emphasis added.] This sub-section creates a non-exhaustive list of ways in which the City is prohibited from controlling the operation of TNS vehicles, including but not limited to their power to issue licences.

[61] When considering whether the respondent's interpretation of s. 317.1 and s. 272.1 is justifiable, it is also important to examine the language the Province chose to use in those sections. The respondent submits that the specificity of the prohibitions on municipal power supports an interpretation that the City was able to regulate TNS operations in any other way. However, *Vavilov* would suggest that the circumscribed and particularized limitation on the City's power indicates that the legislature intended to tightly control the City's ability to interpret the provisions. At para. 110 the Court states:

> … If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language -- for example, "in the public interest" -- it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language ...

[62] Following this guidance, the amendments to the *Charter* cannot reasonably be said to have given the City flexibility in interpreting the restrictions on their ability to control TNS numbers or rates.

[63] Second, with respect to the internal logic of the City's decision, the respondent submits that the City cannot be held to a standard of correctness, and that it is justifiable for the City to decide that s. 317(1) left residual municipal power to regulate some aspects of TNS operations. The bylaw charges permit fees for stopping on City streets, and the 2019 amendments did not remove the City's power to charge permit fees, nor did it remove the City's power to regulate the flow of traffic, including for TNS vehicles. While this may be a plausible reading of the *Charter*, I cannot find such an interpretation withstands a robust reasonableness review given the overall context and purpose of the legislation.

[64] The 2019 amendments marked an intentional move away from regulatory duplicity for TNS providers in this Province. Statutory authority was given to the Board to decide the number of vehicles that can operate under a given TNS licence. The *Act* not only gives the Board the power to issue licences for TNS vehicles to

operate, it also gives the Board the power to establish terms and conditions of these licences, including fleet size and operating areas.[14]

[65] If the respondent's interpretation of s. 21.8 were accepted, it would result in precisely the kind of legislative duplicity that the Province was intending to correct with the 2019 amendments. Before the amendments, there was overlapping regulatory jurisdiction for passenger directed vehicles, shared by the Province and municipalities. Historically, municipalities were gatekeepers of the passenger directed vehicles operating in their jurisdiction, for example the City could regulate the number of taxis operating in Vancouver by controlling the issuance of licences. With the advent of ride-sharing services, in 2018 the Legislature's Select Standing Committee on Crown Corporations recommended eliminating this regulatory overlap to implement a "provincial, centrally-managed licensing program."[15]

[66] The Minister of Transportation at the time explained that with the amendments the Province intended to eliminate regulatory overlap between municipal and provincial governments that had "plagued the passenger directed vehicle industry for years," by removing "the authority of a municipality to refuse to allow the delivery of transportation services within their jurisdiction despite the Passenger Transportation Board's approval."[16]

[67] I agree with the respondent's submission that it is important to not only consider the objectives of the Province, but ultimately, which of these intentions were made into law. It is true that the *Act* was not amended to specifically state that the Board's control over licence conditions include the kind of price-mechanism anti-congestion measures the City implemented in s. 21.8. However, the respondent's

[14] Section 28(3)(iii)(iv) *Passenger Transportation Act*, S.B.C. 2004, c. 39
[15] British Columbia, Legislative Assembly, Select Standing Committee on Crown Corporations, "Transportation Network Companies in British Columbia," 2nd Sess., 41st Leg., British Columbia (February 2018) at iv, 23-24, 31.
[16] "Bill 55-2018, *Passenger Transportation Amendment Act*, 2018", 1st reading, Official Report of Debates of the Legislative Assembly (Hansard), 41-3 (November 20, 2018) at 6619 and (November 19th, 2018) at 6505 (Hon. C. Trevena).

submission that the Province left the authority to implement supply management measures with municipalities is incompatible with the text of the legislation itself.

[68] Section 28 of the *Act* does not limit the Board's power over licence conditions to supply management measures such as regulating fleet sizes or operating areas, rather, sub-section (3) gives the Board the authority to "establish terms and conditions … including, without limitation, terms and conditions" as enumerated in the sub-section. It is clear that s. 28(3) gives the Board power to determine all terms and conditions that will apply to a licence, and it is not limited to the supply management measures that are specifically listed in ss. 28(3)(c)(iii) and (iv).

[69] Furthermore, when the legislative context is examined, there is no reasonable way the City could find that the amendments fractured the centralized power granted to the Board to control TNS supply through licencing terms and conditions. The amendments give the Board the ability to impose conditions on licences including but not limited to caps on fleet sizes and the designation of operating areas. A 2018 Standing Committee report about TNS companies in B.C. makes clear that vehicle caps and operational boundaries are forms of supply management.[17] Significantly, the report explains that the kind of price mechanism the City created in s. 21.8 is also a form of supply management. The report describes such price mechanisms as an alternative to vehicle caps that control the number of TNS vehicles through consumer demand.

[70] The Standing Committee report reveals that when the 2019 amendments were contemplated, issues around supply management and traffic congestion were thoroughly reviewed, with "service boundaries and vehicles caps being discussed at length."[18] Price mechanisms to address traffic congestion were identified as an indirect way to regulate supply. Ultimately, the committee concluded that vehicle caps were not appropriate for TNS providers, and the focus of the debate became

[17] British Columbia, Legislative Assembly, Select Standing Committee on Crown Corporations, "Transportation Network Companies in British Columbia," 2nd Sess., 41st Leg., British Columbia (February 2018).
[18] British Columbia, Legislative Assembly, Select Standing Committee on Crown Corporations, "Transportation Network Companies in British Columbia," 2nd Sess., 41st Leg., British Columbia (February 2018) at 17.

how to address increased traffic congestion that might ensue with a “no cap” approach. The City of Vancouver raised the same concerns to the committee that informed the impugned bylaw, that is, increased vehicle use and environmental damage that could arise from an unlimited fleet size.

[71] While some committee members favoured allowing regional governments to submit proposed fare schedules or price mechanisms (like congestion pricing) to the Board, others proposed a province-wide approach to avoid regulatory overlap and ensure seamless delivery of TNS services.[19] The only agreement that could be reached regarding these supply management issues was that the evidence would need to be closely monitored to determine whether anti-congestion measures should be undertaken by the Province. This is reflected in the recommendations requiring TNS operators to share data with the Province, including about where trips start and end. This recommendation was adopted in the legislation.

[72] The respondent submits that the City had a reasonable basis to decide that since the Province did not legislate any of the proposed anti-congestion measures, they were entitled to do so. This interpretation is not supported by the evidence. Given the role of anti-congestion price mechanisms, as explained in Standing Committee report, and specifically the way that supply management was discussed and ultimately legislated, there is no justifiable basis for the City to find that the Province intended to share its ability to regulate TNS supply with municipalities.

[73] The Standing Committee report shows that increased vehicle congestion was contemplated as an issue to which the Province would have to respond, not municipalities. For example, one of the City’s proposals was for a levy to be imposed by the Province as an anti-congestion measure. This recommendation was not endorsed in the report, nor was any such thing included in the ensuing legislation. The 2019 amendments are consistent with the recommendations of the Committee that the Province continue to assess the evidence before employing alternatives to

[19] *Ibid* at 17-18.

vehicle caps, such as geo-fencing, or the anti-congestion permit fee the City went on to enact in s. 21.8.

[74] The respondent submits the City could have decided they were authorized to legislate anti-congestion price mechanisms because the amendments show that the Province did not want to deal with the contentious issue of traffic congestion. There are two problems with this reasoning.

[75] First, the Committee reports are incapable of supporting the inference that the Province did not want to deal with issues around congestion. The report flagged increased congestion as a potential issue and recommended that the Province collect data from TNS providers to make evidence-based decisions.

[76] Second, the provincial decision not to include anti-congestion measures in the legislation does not equate to a decision to share their supply management power with municipalities. The Standing Committee report elucidates how the kind of price mechanism employed by s. 21.8 is an alternative form of supply management. Anti-congestion pricing can be used instead of fleet size caps, which it was agreed would be ill-suited to the TNS industry. Significantly, the legislation that the Province ultimately enacted did not just limit the City from imposing vehicle caps, it more broadly prohibits the City from regulating the *number* of passenger directed vehicles operating under a licence. The only reasonable interpretation of the bylaw is that the 'number of vehicles' is supply, whether it is achieved through caps, prescribed fleet sizes, geofencing or price mechanisms.

[77] There is also persuasive evidence before this Court that the City understood the limitations the Province had placed on its power in terms of supply management. In the June 2019 City report, it is acknowledged that municipalities cannot restrict or prohibit a provincially licensed TNS or its vehicles from operating in the City.[20] The same report states that the City cannot regulate supply or prohibit TNS vehicles from operating within municipal boundaries. However, for the reasons I have given, that is

[20] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 6.

indeed the intended effect of s. 21.8. By designating the entire Metro core as a place where TNS vehicles cannot stop to pick up or drop off passengers, the City cannot justify the position that it was not interfering with provincial authority to set terms and conditions on TNS licensees.

[78] The respondent submits that the bylaw is nevertheless not unreasonable because a municipality acting within its jurisdiction may in some instances be able to frustrate the intentions of a provincially constituted body, also acting within its jurisdiction. The respondent finds support for this submission in *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329 [*Yellow Cab*] (at para. 85). *Yellow Cab* is a pre-*Vavilov* and pre-2019 amendment review of the City's authority on a very similar issue, that is, whether the City was entitled to use its power under s.317(1)(m) to regulate fleet sizes for taxi's operating in the City in ways that contradicted fleet size regulations made by the Board. Not only does *Yellow Cab* demonstrate some of the problems with jurisdictional overlap that the 2019 amendments were meant to address, specifically with respect to its reliance on powers under ss. 317(1)(m) which the Province expressly withdrew by enacting s. 317.1, *Yellow Cab* also makes clear that a municipality can only 'frustrate' provincial will when the City is acting within its jurisdiction.

[79] The respondent also relies in part on remarks of the Minister of Transportation during the legislative debates of November 26, 2018, in submitting that the amendments leave room for municipalities to regulate TNS providers in the way that the City has done in s. 21.8. However, the breath of this particular bylaw is distinct from the type of powers the Minister said ought to be left to municipalities. The comments of the Minister were made in the context of debating whether the amendments ought to restrict municipal power from *any* regulation of TNS vehicles, as opposed to specifically limiting the City's power to regulate in relation to the *number* of passenger directed vehicles. The Minister endorsed the more narrow approach which was ultimately legislated, stating:

> Much of the role will be handed to the Passenger Transportation Board, but there is still a role for local government. That's anywhere from where the taxi stand is in the community through to the age of the fleet, the standard of the

> fleet – those sorts of things that local government will still want to maintain control of and will be able to maintain control of.[21]

[80] The Minister's remarks about municipalities deciding the specific locations of taxi stands is entirely different than the scope of the impugned bylaw, which creates operational boundaries within the city itself. It is not just any zone that the City has decided TNS vehicles cannot stop to pick up passengers, it is the entire area identified by the City as having the highest demand for ride-sharing trips.[22] While it is true that the legislative debates reveal an intention to leave some residual regulatory powers with the municipalities, there is no reasonable basis for the City to have decided it could encroach on the newly centralized provincial power to control TNS supply and pricing. The Minister also announced that the amendments would address regulatory overlap and would remove the ability of regional governments to restrict or refuse TNS operation. The Board was to be given "exclusive jurisdiction in determining supply and operating area for both taxi's and ride hailing."[23]

[81] While the City could reasonably find itself authorized to impose some permit fees to regulate traffic, including for TNS vehicles under ss. 317(1)(a)(c) and (w), it is unjustifiable to make regulations so extensive that they do exactly what s. 317.1(4) says the City cannot do, which is to regulate the number of TNS vehicles operating under an authorization. Similarly, the City could not interfere with the issuance of TNS licences by requiring as a condition of a business licence, compliance with a bylaw that controls supply through price-mechanisms. This exercise of power is prohibited by s. 272.1. For reasons I have outlined earlier, this specific bylaw creates a prohibition on stopping to pick up and drop off passengers that is so broad and targeted to integral operations of a TNS vehicle that it is unreasonable to find the

[21] "Bill 55-2018, *Passenger Transportation Amendment Act*, 2018", 1st reading, Official Report of Debates of the Legislative Assembly (Hansard), 41-3 (November 26, 2018) at 6866 (Hon. C. Trevena).
[22] City of Vancouver, *Adapting to Provincial Legislative Changes Related to Passenger Directed Vehicles* (Report) RTS No. 12922 (Vancouver: City of Vancouver, June 24, 2019) at 10.
[23] "Bill 55-2018, *Passenger Transportation Amendment Act*, 2018", 1st reading, Official Report of Debates of the Legislative Assembly (Hansard), 41-3 (November 20, 2018) at 6620 (J. Sturdy).

bylaw does not tread into the prohibited territory of regulating the number of TNS vehicles operating in the City.

[82] The stated goal, plain wording, and ultimate effect of the bylaw restricts the ability of TNS vehicles to operate to the full extent of the licences they were granted. The only way to ensure the delivery of TNS services is not limited by the City is for the TNS provider to pay an anti-congestion permit fee. Anti-congestion measures were specifically considered by the Board when the petitioner sought its licence in 2020. The Board was not satisfied that there was sufficient evidence to conclude TNS would increase vehicle congestion and declined to impose such restrictions, preferring to monitor the situation before considering any such measures. The City's decision to implement such anti-congestion measures themselves by imposing conditions on the licence that the Board granted creates the kind of duplicity in regulation that the Province rectified with its 2019 amendments.

[83] When the City decided to enact s. 21.8, it exercised powers for a purpose broader than regulating the flow of traffic. The bylaw was intended to reduce reliance on vehicle transportation, and to regulate the ability of TNS vehicles to operate in the downtown core where the City expected demand for TNS vehicles to be highest. This objective cannot logically be achieved without transgressing the legislative constraints that prevent regional governments from regulating the number of TNS vehicles. The bylaw does not regulate traffic flow in discrete lanes or streets, or prescribe particular areas where TNS vehicles can stop, such as the Minister's example of deciding where taxi stands should be located. Rather, it imposes a prohibition on any TNS trip starting or ending in the Metro Vancouver core. While the prohibition is not absolute, the imposition of the permit fee was designed to impact supply indirectly through increased pricing.

[84] In addition, the bylaw regulates supply directly, by prohibiting TNS providers from allowing any of their vehicles to pick up a passenger in Metro Vancouver during peak hours unless the provider pays a fee. Picking up a passenger is the very definition of an "operating area." The City has unreasonably given itself the power to

decide how much a TNS provider must pay in order to operate in Metro Vancouver. The bylaw prohibits every TNS vehicle from conducting essential aspects of its operation in the downtown core during peak hours. The permit fee imposes a fee on doing business in the Metro Vancouver, with a marginal exception for trips that pass through without stopping.

[85] It is safe to say that while s. 317.1(4) and s. 272.1 may not include every possible section in the *Charter* that the City could invoke to impact the ability of TNS companies to provide their services in Vancouver, the municipal powers that were specifically limited relate to the obvious ways in which the City could interfere with the Province's authority to regulate the conditions related to a licence that only the Board has jurisdiction to issue. To be clear, it may be reasonable for the City to decide it can impose permit fees on TNS providers, but in so doing, the City must not stray into the statutorily prohibited areas defined in the same section of the *Charter* that remove municipal power to regulate the number of vehicles operating under an authorization.

[86] While the text of the bylaw leaves open the possibility that it may not regulate either numbers or rates, the only rational interpretation is to find it does one or the other. While it is not necessarily relevant whether in practice the bylaw ended up regulating supply or demand, the petitioner has tendered evidence that it does pass its permit fees directly on to passengers as a "congestion and curbside management fee." Consequently, passengers starting or ending their rides in Metro Vancouver during peak times pay more than the rates established by the Board when the licence was granted.

[87] While the permit fee prescribed in the bylaw could currently be considered modest in relation to the $3.50 minimum rate set by the Board, the irrationality of the City's decision is exposed by considering a hypothetical situation where the bylaw imposed a permit fee of $1,000 every time a ride-share stopped to pick up or drop off a passenger in a vehicle-congested district of Vancouver. Could the City continue to maintain the bylaw does not establish a minimum rate charged for service, or that

the permit fee does not control the number of licenced TNS vehicles operating in the City? It is entirely possible that permit fees could be used in this way by municipalities to refuse to allow the delivery of transportation services within their jurisdiction. The quantum of the permit fee is immaterial to the qualitative way this particular bylaw interferes with either supply or rates for TNS vehicles. The legislative framework establishes that the number of vehicles operating under a given licence and the rates that they charge are the exclusive jurisdiction of the Board. Section 7(1)(f) of the *Act* not only entitles the Board to set or approve rates to be charged by a licensee, but also grants them the authority to "approve any rule, practice or tariff of the licensee in relation to those rates." When viewed in light of the larger legislative and factual context, it is unjustifiable for the City to create an operational conflict for TNS vehicles who now must chose between limiting their operations in an area they are most in demand, or impose a tariff on their rates in contravention of the Board's authority to approve any such thing.

D. Does the Bylaw Create a Toll?

[88] The petitioner submits that s. 21.8's permit fee creates a toll on the use of City streets, specifically streets in the Metro Vancouver core where TNS vehicles are prohibited from stopping unless they pay a charge. The respondent distinguishes the permit fee from a toll, since the permit fee only applies to stopping on City streets, and not driving on them. For example, no "toll" would be imposed for using Metro Vancouver streets if the TNS vehicle passes through on its way to another place without stopping to conduct its business.

[89] "Toll" is not defined in the legislation, and the parties point to the Minister of Municipal Affairs' description of a toll as a cost for transiting "along the streets." While the effect of s. 21.8 may be similar to a toll in many situations, I find the City could have reasonably differentiated between a toll for travelling along a road and a fee for stopping to begin or end a journey.

[90] Sections 317 and 199.01 must be read in conjunction with each other. These two sections of the *Charter* allow the City to regulate stopping on City streets, while

also limiting the ability of the City to charge a toll for transiting along streets. While the breadth of the bylaw was fatal to the reasonableness of the City's decision in other ways, when it comes to the question of whether the bylaw creates a toll for TNS vehicles, there are relevant differences.

[91] In this context, the fact that the bylaw does not create a charge for driving along streets could logically be relied on to decide the permit fee is not a toll. It remains reasonable to say that this bylaw regulates stopping, even though the breadth of the restrictions on stopping would result in a significant number of TNS vehicles paying a fee to drive along certain streets. This bylaw can reasonably be found not to be a toll for the same reason that it is open to the City to decide road-side parking fees are not tolls on the use of streets. For example, residents might always park their cars on their home street and may therefore be subject to an additional cost for driving along that street compared to other drivers. But this does not necessarily make a parking fee a "toll" for the use of that street.

[92] It is reasonable for the City to have decided that its exercise of powers under ss. 317(a) (c) and (w) do not necessarily violate the prohibition against imposing a toll of the use of City streets. There is a logical path for the City to have decided that a toll is a charge for driving along a street, not for how a street is used.

VI. CONCLUSION

[93] The petitioner has established that the City's decision to enact s. 21.8 of the bylaw cannot be justified on the standard of a reasonableness review. At para. 118 of *Vavilov* the Court writes:

> … Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law – whether courts or administrative decision makers – will do so in a manner consistent with this principle of interpretation.

[94] The respondent's interpretation of the City's decision is irreconcilable with the text, context and purpose of the statutory framework in which this bylaw was

enacted. Through the 2019 amendments to the *Charter* and other legislation, the Province intended and did curtail municipal power to regulate the numbers and rates for the operation of TNS vehicles in British Columbia. A reasonable decision is one that respects this legislative intent. The City's decision to regulate TNS operations in this bylaw using the powers that they do have in the *Charter* cannot be considered reasonable in the context of the relevant factual and legislative constraints. Given the specifics of this particular bylaw, it is unreasonable for the City to decide it was authorized to invoke its powers to regulate stopping on City streets to defeat the purpose and text of its governing legislation. In the light of a broad and purposive analysis, I cannot find it was reasonable for the City to decide it was authorized to enact s. 21.8 of the *Charter*. Therefore, the bylaw is invalid and the decision to adopt it was unreasonable.

[95] The relief sought by the petitioner is granted. If the issue of costs is contentious, the parties have leave to set a further appearance before this Court.

"Ormiston J."