IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Uber Canada Inc. v. Bauer,* 2025 BCSC 1790

Date: 20250915
Docket: S242757
Registry: Vancouver

Between:

Uber Canada Inc. and Uber Technologies, Inc.

Petitioners

And

Martin Bauer, His Majesty the King in Right of the Province of British Columbia, and The British Columbia Human Rights Tribunal

Respondents

Before: The Honourable Justice Majawa

On judicial review from: An order of the British Columbia Human Rights Tribunal, dated March 1, 2024 (*Bauer v. Uber Canada Inc.*, 2024 BCHRT 62, CS-001018).

Reasons for Judgment

Counsel for the Petitioners:	M. Feder, KC P. Williams A. Jackson T. Lorenson, Articled Student
Counsel for the Respondent His Majesty the King in Right of the Province of British Columbia:	Z. Ansley R. Pauls
Counsel for the Respondent the British Columbia Human Rights Tribunal:	K. Hardie
The Respondent, appearing in person:	M. Bauer
Place and Dates of Hearing:	Vancouver, B.C. April 23-24, 2025
Place and Date of Judgment:	Vancouver, B.C. September 15, 2025

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OVERVIEW

[1] When the province introduced regulations for transportation network services ("TNS") under s. 29(1)(e)(i) of the *Passenger Transportation Act,* S.B.C. 2004, c. 39 (the "*Act*") and s. 24.1(2) of the *Passenger Transportation Regulation,* B.C. Reg. 266/2004 (the "*Regulation*"), it did not require transportation network companies ("TNCs") like Uber, as a condition of their license, to provide wheelchair accessible vehicles ("WAVs") (as some taxi companies must). The 2019 amendments to the *Act* and *Regulation* levied a per-trip fee on TNS licensees. Pursuant to these amendments and the Passenger Transportation Board's (the "Board") decision to approve Uber's license, Uber pays a per-trip fee of $0.90 for each passenger trip taken in a non-WAV provided on Uber's platform as part of its license fee. The decision to implement the per-trip fee on TNCs was made after extensive consultations and reviews by the provincial government where the issue of accessibility was at the forefront.

[2] Uber commenced operations in British Columbia in 2020 and complied with the terms of its license requiring it to pay the per-trip fee. In Uber's view, it paid the per-trip fee in lieu of providing wheelchair accessible services.

[3] In 2020, Martin Bauer filed a complaint with the British Columbia Human Rights Tribunal (the "Tribunal") alleging that Uber discriminated against him on the basis of his physical disability. The Tribunal agreed with Mr. Bauer and found that Uber had breached s. 8 of the *Human Rights Code,* R.S.B.C. 1996, c. 210 [*Code*] because it discriminated against Mr. Bauer by not providing wheelchair accessible services. Of central importance to the Tribunal's conclusion was its determination that the purpose of the per-trip fee was to incentivize Uber to provide WAVs on its platform.

[4] In this application for judicial review, Uber Canada Inc. and Uber Technologies, Inc. (together "Uber"), seek an order setting aside the March 1, 2024,

decision of the Tribunal (the "*Decision*")[1]. Uber also seeks an order dismissing Mr. Bauer's complaint against Uber that underlies the *Decision*.

[5] Uber does not challenge the Tribunal's findings that s. 8(1) of the *Code* applies to its ride-hailing services or that the lack of WAVs adversely affected Mr. Bauer based on his physical disability. Rather, Uber challenges the Tribunal's conclusion that Uber did not prove the available statutory defence: a *bona fide* and reasonable justification for the otherwise discriminatory impact on Mr. Bauer.

[6] Uber argues that it was justified in not providing WAVs because the province intended that the per-trip fee payable by Uber pursuant to the *Act* and the *Regulation* was to be paid instead of providing WAVs. In essence, Uber argues that the legislature intended, by way of the per-trip fee, to exempt Uber from its obligations to provide wheelchair accessible services under the *Code.* Thus, Uber says it was justified in not providing WAVs, and therefore, did not breach the *Code*.

[7] As will be discussed in detail later in these Reasons, I have determined that the Tribunal erred in its interpretation of the purpose of the per-trip fee. It's conclusion that the purpose of the fee was to incentivize Uber to provide WAVs is not supported on the record, nor on the proper approach to statutory interpretation. However, I do not agree with Uber that the purpose of the per-trip fee was intended to be in lieu of requiring Uber to provide WAVs such that the legislature intended that Uber be exempt from its obligations under s. 8 of the *Code.* Rather I have concluded that the purpose of the per-trip fee was to support accessibility in the passenger directed vehicle ("PDV") industry generally, as well as to offset the costs of the government in regulating TNCs.

[8] The Tribunal's misunderstanding of the purpose of the fee was central to its analysis of whether Uber was justified in not providing WAVs, and therefore, was material to its conclusion that Uber breached the *Code*. In the circumstances, the matter is remitted to the Tribunal for reconsideration of Uber's justification defence in

[1] The Tribunal's *Decision* is indexed as *Bauer v. Uber Canada Inc.*, 2024 BCHRT 62

accordance with these Reasons, and in particular, with consideration of the proper interpretation of the purpose of the per-trip fee.

[9] Given my conclusion, it is not necessary to consider Uber's alternative argument that s. 29(1)(e)(i) the *Act* and s. 24.1(2) of the *Regulation* conflict with s. 8 of the *Code* to the extent they require Uber to pay a per-trip fee for trips taken in non-accessible passenger directed vehicles.

BACKGROUND

Uber's Services and License

[10] Uber Technologies, Inc. is Uber Canada Inc.'s ultimate parent company. Uber Canada is licensed to provide TNS under the *Act.* TNS are services respecting the connection of drivers of passenger directed vehicles with passengers who hail and pay for the services through the use of an online platform. Uber's app connects passengers who request transportation services with independent drivers who can provide those transportation services using their own vehicles. Uber does not own or operate vehicles and Uber-affiliated drivers (who provide their own vehicles) are independent. As a result, Uber struggles to provide WAVs as they are very expensive and not many private individuals own one. Certainly, very few Uber-affiliated drivers have a WAV.

[11] Prior to adopting amendments to the *Act* and the *Regulation* that enabled the Board to make licensing decisions for TNCs, the provincial government completed an extensive consultation process on the legalization of TNS. Those consultations and reviews included legislative reports, debates, public statements and stakeholder engagement.

[12] WAVs were a significant issue raised in the consultation process: accessibility concerns were frequently raised and considered, and the province reviewed multiple policy options to address them. One such policy considered was imposing a similar requirement on TNS licensees as some taxi companies, which must have a certain percentage of WAVs in their fleets. Ultimately, however, the province did not impose

any specific accessibility prescriptions in the *Act* or the *Regulation*, save the requirement TNS licensees pay a per-trip fee of $0.90 for each trip taken in non-accessible passenger directed vehicles.

[13] The province adopted the amendments to the *Act* and *Regulation* in September 2019, bringing TNS to British Columbia. The Board approved Uber Canada's license in January of the following year in reasons indexed as Licence Application Decision, Application TNS6988-19 (Uber Canada Inc.).

Mr. Bauer's Complaint and the Hearing

[14] Riders in the Lower Mainland cannot specifically request a WAV through the Uber app. Mr. Bauer is a wheelchair user. On March 9, 2020, Mr. Bauer filed a human rights complaint alleging that Uber discriminated against him based on physical disability in a service customarily available to the public, contrary to s. 8 of the *Code*. In an amendment to his complaint filed August 19, 2020, Mr. Bauer said he attempted to order an Uber vehicle suitable for a power wheelchair but was unable to do so because Uber does not have any WAVs in British Columbia.

[15] On February 24, 2021, Uber filed a response to the complaint. Uber stated that if it owed a duty to accommodate Mr. Bauer, it had satisfied the duty to accommodate via payment of the per-trip licensing fee to the government under the *Regulation.* Uber said that the Board confirmed the per-trip fee operates in lieu of having a WAV option and the provincial government publicly asserted the per-trip fees would be used to fund accessibility programs. In the further alternative, Uber said that, if the *Code* requires Uber to provide a WAV ride option, the per-trip fee in the *Regulation* is inconsistent with the *Code*. Pursuant to s. 46.1(3) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*]*,* Uber notified the Attorney General of British Columbia ("AGBC") of its conflict argument and the AGBC participated in the complaint proceeding.

[16] The hearing took place on September 15, 2022, with written submissions following.

The *Decision*

[17] The Tribunal issued the *Decision* on March 1, 2024.

[18] The Tribunal addressed the regulatory framework under which Uber was licensed to operate in the Lower Mainland (paras. 27-32). The Tribunal next addressed the Board's approval of Uber's application for a licence under the *Act* (paras. 33-36). The Tribunal said the Board's licensing approval does not require Uber to provide wheelchair accessible services but does require Uber to meet specific conditions if those services are provided (para. 35). The Tribunal quoted from paras. 122-123 of the Board's decision explaining that it was not going to require Uber to have the same accessibility standards as taxis (para. 36).

[19] The Tribunal next said that it was important to view the Board's decision in context (para. 37), including that the Board approved Uber's licence solely on the criteria in s. 28 of the *Act* (para. 40) and that s. 23.1 of the *Act* requires Uber to comply with "other applicable laws" (para. 42). That context also included certain correspondence between Uber and the Minister of Transportation and Infrastructure (the "Minister") about how to use the funds collected from the per-trip fee, and between Mr. Bauer and the Registrar under the *Act* about the per-trip fee (paras. 43-46). The *Decision* also referenced a press release from the Ministry of Transportation and Infrastructure which stated that:

> The per-trip fee was created to offset the regulatory costs and impacts of enabling ride-hailing operations, and to help alleviate the impact that ride hailing has on the availability of wheelchair-accessible vehicles. Unlike ride-hailing companies, taxi companies may be required as part of their operating licence to reserve a portion of their fleet for accessible vehicles.
>
> [citations omitted]

[20] The Tribunal found that Uber's lack of wheelchair accessible services in its ride-hailing services adversely affected Mr. Bauer based on his disability, such that Mr. Bauer had proved his *prima facie* case of discrimination. This finding is not in dispute on this judicial review application.

[21] The Tribunal then went on to consider Uber's justification defence. The Tribunal summarized Uber's arguments as follows:

a) Uber does not provide wheelchair accessible trips because of choices that the legislature made about regulating ride-hailing companies. Under the *Act* and *Regulation*, ride-hailing companies, like Uber, are required to pay a "per-trip fee" for passenger trips taken in non-accessible vehicles.

b) The legislature decided that ride-hailing companies would pay the per-trip fee instead of providing wheelchair accessible services (*Decision*, para. 13).

[22] The Tribunal considered Uber's justification defence with reference to the Supreme Court of Canada's decision in *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868 [*Grismer*]. At para. 20 of the *Decision*, the Tribunal set out that Uber could prove its justification defence by showing that:

1) Uber adopted a non-wheelchair accessible service standard for a purpose or goal rationally connected to its function;

2) Uber adopted the standard in an honest and good faith belief that it was necessary to fulfill the purpose or goal; and

3) Uber's non-wheelchair accessible service is reasonably necessary to accomplish its purpose or goal in the sense that Uber could not accommodate wheelchair users without experiencing undue hardship.

[23] The Tribunal found that Uber did not prove any of the three elements of the *Grismer* test (*Decision* at paras. 89 – 137). The Tribunal concluded that:

1) Uber's "goal in adopting a non-wheelchair accessible service standard was to avoid any additional costs", referring to costs other than the per-trip fee (*Decision* at para. 96);

2) Uber's goal of avoiding further costs was not rationally connected to Uber's ride-hailing purpose (at paras. 106-113);

3) there was no evidence Uber adopted its non-wheelchair accessible standard in good faith (at para. 115);

4) paying the per-trip fee is not reasonable accommodation because it does not address Mr. Bauer's access to Uber's services (at para. 124);

5) the per-trip fee is not paid in lieu of providing wheelchair accessible trips; rather, its purpose is to incentivize TNS licensees to provide wheelchair accessible options (at paras. 127-129); and

6) there was insufficient evidence that accommodating Mr. Bauer would cause undue hardship to Uber (at paras. 130-132).

[24] The Tribunal next addressed Uber's alternative argument that the *Code* conflicts with the *Act* and *Regulation* and found no conflict (paras. 138-139).

[25] The Tribunal made a declaration under s. 37(2)(b); ordered Uber to cease and refrain from committing the same or similar contravention of the *Code* under s. 37(2)(a) and to provide a wheelchair accessible option in the Lower Mainland within one year of the *Decision*; and ordered Uber to pay Mr. Bauer $35,000 compensation and interest under s. 37(2)(d)(iii) of the *Code*.

[26] On judicial review, Uber argues that the Tribunal erred in determining Uber had not justified the *prima facie* discriminatory conduct, and in concluding that the Code did not conflict with the *Act* and *Regulation* to the extent they require Uber to pay the per-trip fee. As will be explained below, my conclusion on the first issue means it is not necessary to consider the second. Fundamental to Uber's argument is that the Tribunal erred in its determination of the purpose of the per-trip fee, which was material to the Tribunal's *Grismer* analysis.

[27] The parties differ on the appropriate standard of review. Uber submits correctness applies to all material questions before this Court; The AGBC and the

Tribunal argue that reasonableness applies to the Tribunal's conclusion regarding the purpose of the per-trip fee.

[28] As a result, I must determine the following issues in these Reasons:

a) What standard of review applies to the Tribunal's conclusion on the purpose of the per trip fee?

b) Did the Tribunal err in its conclusion that the purpose of the per-trip fee was to incentivise TNCs to provide wheelchair accessible services?

c) Did the Tribunal err in its justification analysis under *Grismer*?

THE LEGISLATIVE PURPOSE OF THE PER-TRIP FEE

[29] The legislature's intent in imposing the per-trip fee on all non-WAV passenger trips taken in rides facilitated by Uber's app is of material importance to the *Decision*. As referenced earlier, Uber argues that the Tribunal erred in concluding that that purpose of the per-trip fee was to incentivize Uber (and other TNS companies) to provide WAVs on their platforms. Rather, Uber says that the fee was imposed instead of requiring it to provide WAVs on its platform.

[30] Applying the correctness standard of review, I have concluded that the Tribunal erred in determining the purpose of the per-trip fee. However, as will be discussed, I do not agree with Uber's interpretation, which is essentially equivalent to the government having granted Uber an exemption from the *Code*. In my view, exemptions from obligations under the *Code* need not be expressly stated in the legislation. However, given the essential and quasi-constitutional role that human rights legislation plays, exemptions must be abundantly clear to be operative. In this case, it is not clear to me that the legislature intended to exempt Uber from its obligations under s. 8 of the *Code*.

[31] Applying the modern approach to statutory interpretation, I have determined that the per-trip fee was not intended to stand in the place of Uber's s. 8 obligations.

Rather, its purpose is to support accessibility in the PDV industry generally, as well as offset the costs of the government in regulating TNCs.

The Appropriate Standard of Review

[32] The standard of review applicable to the judicial review of decisions of the Tribunal is set out by s. 59 of the *ATA*: *Code*, s. 32(q). Section 59 of the *ATA* provides that the standard of review is correctness save for questions "respecting the exercise of discretion, findings of fact, and the application of the common law rules of natural justice and procedural fairness." The Tribunal's findings of fact are reviewable on the reasonableness standard and its discretionary decisions are reviewable on a standard of patent unreasonableness.

[33] Unlike the standard that applies at common law, the standard of review under the *ATA* for questions of mixed fact and law is correctness: *J.J. v. School District 43 (Coquitlam)*, 2013 BCCA 67 [*J.J.*] at para. 26; *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 [*Vancouver Area Network of Drug Users*] at para. 47. However, the Court of Appeal has cautioned against being too quick to brand a question one of mixed fact and law, because if there is an extricable question of fact the Court must defer to the Tribunal in respect of that issue: *J.J.* at para. 28. There is no dispute that the correctness standard applies to the review of any extricable question of law.

[34] The parties disagree on the applicable standard of review on the question of whether Uber justified the adverse impact on Mr. Bauer under s. 8(1) of the *Code*. As I understand their positions, the difference ultimately boils down to a disagreement over whether the determination of legislative purpose is a factual or legal exercise. The AGBC and the Tribunal submit that the Tribunal's findings as to the purpose of the per-trip fee is not an extricable question of law and so must be reviewed on a standard of reasonableness. Uber's position is that the interpretation of the legislation, including determining its purpose, is a pure question of law and so is reviewable on a correctness standard.

[35] The Tribunal and AGBC acknowledge that the identification of the purpose of a provision is an element of statutory interpretation but argues that this does not render the exercise a purely legal one in every case. The Tribunal cites *Canada (Attorney General) v. Bedford*, 2013 SCC 72, where the Court held that the trial judge's assessment of social and legislative facts were findings of fact entitled to deference: at paras. 48-49. The Tribunal argues that its assessment of the purpose of the per-trip fee involved an assessment of the evidence, which it argues must be reviewed on a standard of reasonableness.

[36] In my view, the AGBC and Tribunal have mischaracterized the issue as to whether there is an extricable question of law. The *ATA* applies a standard of correctness to questions of mixed fact and law as well as law: *J.J.* at para. 26; *Vancouver Area Network of Drug Users* at para. 47. As a result, the issue is not whether the identification of purpose is a "purely legal" exercise; reasonableness would apply only if there was an extricable question of fact: *J.J.* at para. 28.

[37] The Tribunal and AGBC conflate findings of social and legislative facts, which *inform* the purpose of the legislation, with the determination of legislative purpose itself. Social and legislative facts are "facts about society at large, established by complex social science evidence": *Bedford* at para. 48. They are concerned with the "causes and effects of social and economic phenomena" and inform the purpose and background of the legislation*: Cambie Surgeries Corporation v. British Columbia (Medical Services Commission)*, 2016 BCSC 1390 at paras. 35-36 [*Cambie Surgeries BCSC*]. As Uber acknowledges, any factual findings the Tribunal made in its interpretation of the statute would be entitled to deference and reviewed on a standard of reasonableness.

[38] By contrast, legislative purpose refers to material goals and reasons underlying the legislation: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada, 2023), at ss. 9.02. Purpose is established directly through explicit descriptions in the legislation itself, and indirectly through consideration of context including extrinsic evidence, such as social and legislative

facts. While social and legislative facts may inform the determination of legislative purpose, they are separate inquiries.

[39] I was provided with no authority in support of a position that the question of the legislature's purpose is one of fact, nor do I find such an assertion persuasive. Such an approach would effectively split the interpretation of a statute, which requires consideration of text, context, and purpose, into separate categories with different standards of review. This cannot be reconciled with the Supreme Court of Canada's clear guidance that they are not separate categories but are interdependent: *R. v. Wolfe*, 2024 SCC 34 at para. 33.

[40] The *Decision* made no findings of social or legislative facts that would be entitled to deference. The *Decision* cursorily engages with external evidence. It notes the legislative framework generally, the decisions of the Board and their reasons for granting Uber a license, communications with the Minister, and press releases from the Minister: at paras. 28-49. The *Decision* does not, however, make any factual findings from this evidence that should be afforded deference.

[41] Ultimately, the *Decision* simply "accept[s] the Attorney General's submission" as to the purpose of the per-trip fee after engaging only with the text of the *Act* and *Regulation*: at para. 128. There is no identification of social or legislative facts nor elaboration as to the factual underpinnings of that conclusion: *Decision,* at para. 129. While I am cognizant of the Court of Appeal's caution in *J.J.* against being too quick to brand a question as one of mixed fact and law, I am unable to identify an extricable question of fact for which the Tribunal is entitled to deference with respect to its interpretation of the purpose of the per-trip fee.

[42] As a result, I agree with Uber that the purpose of the per-trip fee is reviewable on a standard of correctness.

Relevant Principles of Statutory Interpretation

[43] The modern approach to statutory interpretation is well settled: the exercise requires that "the words of an Act are to be read in their entire context and in their

grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para. 23; *Seabridge Gold Inc. v British Columbia*, 2025 BCSC 558 at para. 42; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26. This requires consideration of the text of the statute, as well as its context, purpose, and relevant legal norms: *Wolfe* at para. 32.

[44] The Supreme Court recently reviewed and re-affirmed the modern approach in *Piekut v. Canada (National Revenue)*, 2025 SCC 13:

> [42] The relevant principles of statutory interpretation are well known. Under the modern principle adopted by this Court, a court considers the words used in legislation "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 117).
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> [43] The modern principle requires a court to interpret statutory language "according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole" (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10; *R. v. Downes*, 2023 SCC 6, at para. 24). Even so, a court need not address text, context, and purpose separately or in a formulaic way, since these elements are often closely related or interdependent (*Bell ExpressVu*, at para. 31; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84, at para. 28).
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> [44] The modern principle reflects "the common law evolution of statutory interpretation over many centuries" (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 2.01[4]; see also S. Beaulac and P.-A. Côté, "Driedger's 'Modern Principle' at the Supreme Court of Canada: Interpretation, Justification, Legitimization" (2006), 40 *R.J.T.* 131, at pp. 141-42). It recognizes that statutory interpretation "cannot be founded on the wording of the legislation alone" (*Rizzo*, at para. 21) because "words, like people, take their colour from their surroundings" (*Bell ExpressVu*, at para. 27, quoting J. Willis, "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6). As this Court has noted, "[w]ords that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation" (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at

> para. 10; see also *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 23).
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> [45] As a result, "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms" (*Alex*, at para. 31; see also *La Presse*, at para. 23; *Vavilov*, at para. 118). At the same time, "just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretative exercise" (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para. 24).

[45] The Supreme Court has affirmed that the modern rule guides the interpretation of human rights legislation, with the addition of certain rules particular to that context:

> Added to the modern principle are the particular rules that apply to the interpretation of human rights legislation. The protections afforded by human rights legislation are fundamental to our society. For this reason, human rights laws are given broad and liberal interpretations so as better to achieve their goals (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, at pp. 546-47; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, 1987 CanLII 109 (SCC), [1987] 1 S.C.R. 1114, at pp. 1133-36; *Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC), [1987] 2 S.C.R. 84, at pp. 89-90). As this Court has affirmed, "[t]he *Code* is quasi-constitutional legislation that attracts a generous interpretation to permit the achievement of its broad public purposes" (*McCormick*, at para. 17). In light of this, courts must favour interpretations that align with the purposes of human rights laws like the Code rather than adopt narrow or technical constructions that would frustrate those purposes (R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at ss.19.3-19.7).
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> *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 31

[46] However, such a broad interpretative approach does not mean that the words of the legislation should be ignored to prevent discrimination wherever it is found. The interpretation must nonetheless be grounded in the text and scheme of the *Code* and reflect its broad purposes: *Schrenk* at para. 32.

[47] Just as rights must be afforded a broad and liberal interpretation to best achieve their broad public purposes, exceptions and defences are narrowly

construed and slow to be recognized: *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.*, 2023 BCCA 168 at para. 76; *Tan v. Canada (Attorney General)*, 2018 FCA 186 at para. 74; see also R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at ss. 19.01[3].

[48] Uber's argument that the per-trip fee was intended to be paid in lieu of an obligation to provide WAVs is, at its core, an argument that it was provided with an exemption from the *Code*. While the legislature can create exemptions from the application of the *Code*, such exemptions "must be clearly stated": *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 81 [*Vaid*]; *Fasken Martineau DuMoulin LLP v. British Columbia (Human Rights Tribunal)*, 2012 BCCA 313 at para. 25.

[49] The AGBC and Tribunal assert that if the legislature intends to create an exemption from the *Code*, it must be clear and expressly stated. They argue that neither the *Act*, *Regulation,* nor the terms attached to Uber's license have such a clear expression of an exemption, leading to the Tribunals finding that "there is no clear and express exemption from the *Code*'s protections in this case": *Decision* at para. 143.

[50] I accept that a legislative exemption from the application of the *Code* must be clear in order to be operative. However, I do not agree with Tribunal's assertion that an exemption must be clear and expressly stated. The Tribunal cites for this proposition *Vaid, First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development)*, 2011 CHRT 4 [*FNCFCS*] at para. 100, and *Disability Rights Coalition v. Nova Scotia (Attorney General),* 2021 NSCA 70 at para. 121. However, neither *FNCFCS* and *Disability Rights Coalition* adopt a "clear and express" standard. *FNCFCS* states "[a]ny exemption from its provisions must be clearly stated" and *Disability Rights Coalition* states "exemptions from human rights legislation must be clearly stated", both citing *Vaid* at para. 81.

[51] In *Vaid* itself "[t]he issue is whether PESRA's [the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2nd Supp.)] system of redress, which runs parallel to the enforcement machinery provided under the *Canadian Human*

Rights Act, manifests a parliamentary intention to oust the dispute resolution machinery of the Canadian Human Rights Commission.": at para. 83. Section 2 of *PESRA* excluded from application other acts of Parliament to the institutions and persons *PESRA* covered:

> …except as provided in this Act, nothing in any other Act of Parliament that provides for matters similar to those provided for under this Act and nothing done thereunder, whether before or after the coming into force of this section, shall apply to or in respect of or have any force or effect in relation to the institutions and persons described in this section.
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> [emphasis added]

[52] The Supreme Court concluded that s. 2 shows such an intention, as there is "clearly a measure of duplication" between *PESRA* and the *Canadian Human Rights Act,* R.S.C. 1985, c. H-6 [*CHRA*], and "the purpose of s. 2 is to avoid such duplication". Nonetheless, the Court affirmed that, given the quasi-constitutional nature of human rights legislation, "any exemption from its provisions must be clearly stated": at para. 81.

[53] I do not find support in *Vaid*, *FNCFCS* or *Disability Rights Coalition* for a requirement that exemptions be expressly stated. Notably, s. 2 of *PERSA,* at issue in *Vaid*, did not contain any express mention of the *CHRA*; rather, the Court found the *CHRA* was captured under "any other Act of Parliament", indicating that express mention of human rights legislation is not essential to establishing that the legislature intended to create an exemption from it. As a result, the absence of an express mention of the *Code* is not dispositive of the issue.

[54] Adopting a requirement that an exemption must be "express" would be inconsistent with the modern approach to statutory interpretation which requires consideration of not just the text of the statute, but the full range of contextual considerations including its purpose, related provisions, legislative drafting provisions, presumption of legislative intent, absurdities to be avoided, etc….: *British Columbia (Securities Commission) v. Pasquill,* 2021 BCCA 424 [*Pasquill*] at para. 35. The "clear and express" standard urged by the Tribunal and AGBC ignores

the need to consider the context, purpose, and norms in favour of a strict textualist review of whether the *Code* is expressly exempted in the words of the act.

[55] In my view, this approach cannot be reconciled with the guidance from the Supreme Court of Canada that statutory interpretation is incomplete without considering context, purpose, and relevant legal norms: *Wolfe* at para. 32. The plain meaning of the text must be tested against other indicators of legislative meaning, as even apparent clarity may be ambiguous when considered in its context: *La Presse inc. v. Quebec*, 2023 SCC 22 at para. 23.

[56] In support of their argument that exemptions must be "expressly stated", the respondents cite *Winnipeg School Division No. 1 v. Craton*, 1985 CanLII 48 (S.C.C.), [1985] 2 SCR 150 [*Winnipeg School*], which states at para. 8 that exceptions to human rights provisions may not be created save by clear legislative pronouncement. The Court found that statutory authority to fix a compulsory retirement age was not "a sufficiently express indication of a legislative intent" to create an exemption from the *Canadian Human Rights Act*.

[57] I do not find that *Winnipeg School* supports a general requirement that exemptions must be expressly stated. The Court's inquiry was into whether the legislature intended to create an exemption, not whether it did so expressly. While this inquiry was limited only to the text of the law, I note that *Winnipeg School* was decided in 1982, prior to the clear adoption of the modern approach to statutory interpretation by the Court in *Rizzo & Rizzo's Shoes (Re),* 1998 CanLII 837 (SCC), [1998] 1 SCR 27 and during a time where the textualist approach played a greater role in the interpretive exercise.

[58] I agree with the petitioners that absence of an express exemption in the *Code*, *Act,* or *Regulation* is not dispositive of the issue. Thus, the question is whether, considering the text of the *Act* and the *Regulation*, as well as their context, purpose, and relevant legal norms, the legislature intended to create a clear exemption from the *Code*.

[59] While I do not agree with the respondents that an exemption must be both clear and express, the *Code* is a quasi-constitutional document and any exemption from its application must be clearly stated. The omission of an express exemption in the text of the *Regulation* and *Act*, while not determinative of the issue, is particularly notable given that the legislature is presumed to know all relevant existing law, including the common law's interpretation of the legislative scheme: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada, 2023), at ss. 8.01. The legislature is presumed to know the quasi-constitutional status of human rights legislation such as the *Code*, and it is aware of the high standard necessary for an exemption to be operative. The fact that the legislature did not include an express exemption is, in my view, a significant factor weighing against a finding that the legislative intent was to create one.

Analysis

[60] Uber's central argument is that the Tribunal erred in its interpretation of the per-trip fee. Uber argues that this error led the Tribunal to find that its failure to provide WAV was unjustified.

[61] Purpose is only a component of the complete exercise of statutory interpretation, which requires consideration of text and context in addition to purpose. These components are closely related and interdependent: *Wolfe* at para. 33. Interpretation of the legislative intent behind the per-trip fee – whether as an exemption, a method of reasonable accommodation, or otherwise – must be undertaken with consideration of text and context.

[62] In Uber's submission, the legislature intended the per-trip fee to establish a regulatory regime where TNS licensees fund the provision of wheelchair accessible services by other parties, not provide the services directly.

[63] The respondent parties agree with the *Decision*'s finding that the purpose of the per-trip fee was to incentivize Uber to provide WAV services. The *Decision* describes its purpose as to "incentivize ride-hailing companies to provide a wheelchair accessible option": at para. 129. In support of this finding, the *Decision*

notes that the fee is imposed only on non-WAV trips, nothing in the *Act* or *Regulation* prevents Uber from providing WAV services, and it can avoid the fee by investing in WAV services: at para. 129.

[64] The Tribunal's determination that the per-trip fee is intended as an incentive is discussed at paras. 128-129 of the *Decision*:

> [128] I agree with the Attorney General's submission that nothing in the relevant sections of the *Passenger Transportation Act* or *Regulation* states that the per-trip fee is paid in lieu of providing wheelchair accessible trips. Section 29(1)(e) of the *Passenger Transportation Act* requires that a ride-hailing company pay the prescribed fee as part of its license. Section 24.1 of the *Passenger Transportation Regulation* sets out that the licensing fee is a flat fee plus an additional per-trip fee for each trip in a non-accessible vehicle.
>
> [129] I accept the Attorney General's submission that the purpose of the per-trip fee is to incentivize ride-hailing companies to provide a wheelchair accessible option. The fee is only imposed on non-wheelchair accessible trips: Attorney General's closing submission at paras. 49-50. There is nothing in the *Passenger Transportation Act* or *Regulation* preventing Uber from providing a wheelchair accessible option. It has always been open to Uber to avoid the per-trip fee by investing in wheelchair accessible services.

[65] I agree with Uber that the *Decision* provides little justification for its conclusion beyond the plain text of the *Act* and *Regulation*. There is no discussion of the context, relevant principles of statutory interpretation, or consideration of the legislature's objectives beyond its adoption of the AGBC's submission. I agree with Uber that the Tribunal erred in its interpretation of the purpose of the per-trip fee.

[66] First, I agree with Uber that the per-trip fee's functionality as an incentive is dubious. The fee is a charge on every non-accessible trip made by an Uber driver without consideration of the demand for WAVs from consumers. Even if Uber adopted sufficient WAV capacity to meet the demand for every wheelchair accessible trip in the province, the fee would still be charged on all non-accessible trips, which trips in any event would form an exponentially larger proportion of rides facilitated by Uber. Uber's provision of WAVs would have no effect on the demand for trips taken in non-accessible vehicles. It thus offers little by way of incentive as the fee is charged regardless of Uber's WAV capacity. For the fee to function

effectively as an incentive, it would need to offer some mechanism by which a TNS provider is rewarded for increasing their WAV services.

[67] Second, obligations under the *Code* are not optional. Any service provider is required to meet their obligations under s. 8 of the *Code* up to the point of undue hardship as a condition of providing a service in this province. Where a service provider fails to meet those obligations, the Tribunal is empowered to make orders to ensure compliance with the *Code*. Within this statutory context, an "incentive" to comply with the *Code* makes little sense as compliance is already mandatory and enforceable at law. Without some evidence to support why TNCs need incentives to meet their mandatory obligations, but others do not, I cannot agree that the legislature's intent was to incentivize compliance.

[68] What then is the purpose of the fee and is it effectively an exemption from an obligation to provide wheelchair accessible services under s. 8 of the *Code?*

[69] In my view, the purpose of the fee was to support accessibility in the PDV industry generally, as well as offset the costs of the government in regulating TNCs. In reaching this conclusion, I have considered the text, context, and purpose of the *Act* and *Regulation* consistent with the modern rule of statutory interpretation: *Pasquill* at para. 35.

[70] Section 29(1)(e) of the *Act* sets out that any TNS must pay a prescribed fee as part of its license:

> **29** (1) After receiving notice from the board that the board has approved, in whole or in part, an application for a licence in which a special authorization is sought, the registrar must issue a licence in response to that application, and provide the licence to the applicant, if the registrar is satisfied that the following requirements are met:
>
> **…**
>
> (e) the applicant has paid the prescribed fee for
>
> (i) the licence

[71] The prescribed fee is set out in section 24.1 of the *Regulation,* which states it is a flat fee plus an additional per-trip fee for each trip in a non-accessible vehicle:

> Flat fee of $5 000 + additional per-trip fee of $0.90 for trips taken in non-accessible passenger directed vehicles operated under transportation network services authorization

[72] While the plain language of the *Act* and *Regulation* provides little indication of the legislature's intent in adopting the per-trip fee, it must be read in conjunction with the other indicators of legislative meaning – context, purpose, and relevant legal norms: *La Presse* at para. 23. There is significant evidence in the record that demonstrates that the legislature was alive to the needs of wheelchair users like Mr. Bauer in its regulatory design process for TNS. Prior to the amendment of the *Act* and *Regulations* with the provisions to allow TNS to operate in British Columbia, the province engaged in significant public engagement and commentary on the proposed legislation, and accessibility was identified as one of the chief stakeholder concerns. The Select Standing Committee on Crown Corporations produced a February 2018 report to the Legislative Assembly titled "Transportation Network Companies in British Columbia (the "2018 Report"). The 2018 Report identified concerns that the introduction of TNCs may lead to an overall decrease in the availability of accessible transportation options, particularly WAVs.

[73] The province considered multiple models to address these concerns in its regulatory model. The 2018 Report identified two main options to ensure equitable and timely access to transportation options through TNS:

1. Require a percentage of vehicles within a TNCs fleet be WAVs; or

2. Impose a levy on TNCs to fund or subsidize WAV trips.

[74] Ultimately, the legislature did not require TNCs to have a percentage of WAVs and adopted only the fee. In Uber's submission, this demonstrates that the legislature did not intend for Uber to provide WAVs at all, as they expressly chose only the fee option presented in the 2018 Report.

[75] I do not agree with this interpretation. First, I note that the 2018 Report contemplates that TNCs may provide wheel-chair accessible trips. For example, their recommendations include a requirement that TNCs guarantee a wait-time

standard for accessible trips that is equal to that of non-accessible trips and ensure that TNCs are not permitted to charge higher fees for customers who need WAVs. They suggest that the funds collected could "be managed internally by each company or collected and redistributed by government". Read in context, the 2018 Report does not imply that the fee is an alternative to the provision of wheelchair accessible services, and so does not support the inference the legislature intended such.

[76] Second, Uber's position implicitly equates the regulatory requirement to have a certain percentage of vehicles within a fleet be WAVs with the obligation under the *Code* to accommodate the needs of persons with disability up to the point of undue hardship, such that the rejection of the former implies the rejection of the latter. The two are not the same: while a minimum fleet percentage of WAVs might meet a service provider's obligation under s. 8 of the *Code*, it does not follow it is the *only* way that this obligation could be met. The fact the legislature declined to mandate *how* a TNC would meet its s. 8 obligations does not mean that they have no such obligations. In my view, the legislature intended to leave it to the TNCs to determine how to best meet their obligations, rather than impose a specific prescription.

[77] Indeed, as the *Decision* notes, Uber's license requires it to provide "rigorous" information back to the Board so it can modify its regulations as needed:

> …In crafting the specific terms and conditions of Uber's licence, it was grappling with a distinct, and untested transportation model in BC. It wanted to give Uber a fair opportunity to succeed in BC and decided that a traditional, one-size-fits-all approach would not accomplish that. It gave Uber more flexibility as a starting point, to support its market entry in BC. However, Uber's license requires it to meet "rigorous" data requirements, enabling the Passenger Transportation Board to "monitor and assess Uber's operations as they unfold and to respond where data establishes the necessity of a regulatory response": Passenger Transportation Board Decision, paras. 78 and 125.
>
> *Decision* at para. 40.

[78] It follows that the legislature merely declined to prescribe *how* TNCs would meet their obligations to provide greater flexibility to TNCs as they tested their business model in British Columbia, and that specific prescriptions would be adopted

later only as the data suggests are necessary. The evidence falls short of leading to a conclusion that the legislature intended to provide TNCs with flexibility as to *whether* to meet their obligations under the *Code*.

[79] In my view, the news releases and communications relied on by Uber do not go so far as to say that the per-trip fee and TNS providing wheelchair accessible services are mutually exclusive:

a) In a July 8, 2019, news release, the Ministry of Transportation and Infrastructure noted it is “protecting accessibility with a new “per-trip” fee to fund accessibility programs in the industry”.

b) In an email dated October 10, 2019, the Minister informed Uber that the per-trip fee was intended to “support accessible transportation options”.

c) In a press release on February 1, 2023, the Province announced that funding from the per-trip fee would be used to provide taxi owner-operators for costs associated with maintaining wheelchair-accessible taxis. The release notes that the per-trip fee was created to offset the regulatory costs and impacts of enabling ride-hailing operations, and to help alleviate the impact that ride hailing has on the availability of WAVs. It also notes that unlike TNCs, taxi companies may be required as part of their operating license to reserve a portion of their fleet for accessible vehicles.

[80] Likewise, the Hansard record indicates that the legislature intended the per-trip fee to address accessibility concerns, but does not go so far as to state that TNCs would not provide such services (British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 3rd Sess, Issue No. 188 (21 November 2018) at 6692 (Hon C Trevena)):

> Accessibility has been a problem. I know that has been highlighted by the member for False Creek. That will be addressed through our legislation by a fee per ride in app-based ride-hailing.

[81] In each example, the statement implies the fee is related to accessibility within the PDV industry and was intended to address concerns regarding accessibility. However, none of these statements say that TNCs do not have their own, independent obligations under the *Code*, nor do I find they are clear enough to imply the legislature intended to alleviate Uber's obligations under the *Code*.

[82] The secondary sources relied upon by Uber suggest that the legislature was concerned that the introduction of TNS in British Columbia would impact the availability of WAVs. This is not in conflict with the respondent's argument that TNCs have an obligation under the *Code* to provide such services. A service provider's obligations under the *Code* extend only to the point of undue hardship, and Uber has argued that its business model is challenged to provide WAVs as few individuals own such vehicles. It is not unreasonable to presume that the legislature was concerned that Uber would be unable, without undue hardship, to supply sufficient WAVs to provide adequate services for wheelchair users like Mr. Bauer, and so additional measures would be necessary to address those needs. This does not mean that the legislature intended to exempt Uber from the *Code* entirely.

[83] The interpretation that I have determined aligns with the stated purposes of the fees identified in a presentation to the Special Committee to Review Passenger Directed Vehicles dated September 7, 2023 (the "September 2023 Presentation"), in which the Deputy Minister of Transportation provided three purposes for the per-trip fee:

a) support accessibility within the PDV industry;

b) offset costs associated with regulating the TNS industry; and

c) enable taxi modernization.

[84] The September 2023 Presentation was not part of the Tribunal record. However, I am satisfied that it should be admitted. Public statements by deputy ministers about the purpose of legislation are admissible—including for the first time

on judicial review—as interpretation aids: *English v. Richmond (City)*, 2021 BCCA 442 at paras. 76-100. None of the respondent's object to its admission.

[85] The three stated purposes in the September 2023 Presentation do not lead to a conclusion that Uber was entirely exempted from obligations under the *Code.* Like with the other evidence of context and purpose relied upon by Uber, the September 2023 Presentation makes no reference to the *Code* at all. Nor do the communications between Uber and the relevant government authorities that are found in the record. It is not clear to me whether this omission is intentional or if it results from the government unintentionally not turning its mind to the specific obligations provided for under the *Code*. In either case, the lack of clarity is not sufficient to conclude that essentially granting Uber an exemption from the *Code* was the legislature's intent in implementing the fee.

[86] The only evidence in the record that directly states TNCs do not provide WAVs is the Board decision granting Uber its license to operate. In its decision, the Board considered the per-trip fee, and noted that the *Regulation* requires the payment of the per-trip fee, and found that it was sufficient to meet its obligations to provide accessible services:

> [123] The Regulation requires Uber to pay a $0.30 per trip fee to the government to be used for accessibility programs, which was a recommendation made in the 2019 TNS Report to offset the fact that TNSs do not provide wheelchair accessible services. The Board considers this to be sufficient. This approach was also taken in Ottawa, Winnipeg and Waterloo and was also an option recommended in the 2018 TNS Report.
>
> [Emphasis added.]

[87] However, the Board does not have jurisdiction to make decisions applying the *Code*: *Act*, s.6 (3)(m). The Board's statement that "TNS do not provide wheelchair accessible services" cannot be extended so far as to effectively determine the application of the *Code* or to grant Uber an exemption from it. The Board's determination applies in the context of the *Act* and *Regulations*; if the legislature had intended the Board to have jurisdiction over human rights in transportation services, it would be provided such authority rather than restricted it in s.6(3)(m) of the *Act*.

[88] While I accept that accessibility is a concern relevant to the Board, and so there is some degree of conceptual overlap with the *Code* in this regard, this is unlike the case in *Vaid* where the Court found that the legislature sought to avoid any overlap and provided the jurisdiction to address employment related discrimination. Not only is such jurisdictional overlap lacking in the extant case, the focus of s. 8 of the *Code* and the Board's determination are different. The Board's focus, as described in Uber's license decision, was on the impact of Uber's operation in the PDV industry *generally*.

[89] By contrast, the *Code* imposes obligations *on* Uber *specifically* to provide its passenger transportation services in a non-discriminatory matter. As the *Decision* noted at para. 85, the *Code* imposes no obligations to address or rectify any impacts Uber's entry may have on the provision of wheelchair accessible services generally. As such, the conceptual focus of the Board and the *Code* are different: one focusses on the PDV industry generally; the other on the specific obligations of a service provider independent of its general impacts.

[90] The Board's statement can thus be understood to be about the impact of Uber's entry in the PDV industry generally, and whether the fee is sufficient to alleviate those impacts. It does not relate to the *specific* obligations imposed on Uber by s. 8 of the *Code*.

[91] Uber also points to the use of the funds collected from the fee as evidence the legislature did not intend for TNCs to provide wheelchair accessible services directly. Currently, the fees are used to fund WAV transportation service providers like taxis companies in order to support the provision of accessible transportation and notably excludes TNCs like Uber from accessing this funding.

[92] I do not agree that their exclusion implies that the legislature did not intend TNCs to provide no WAV services. The fact that the legislature has decided that one type of service provider and not another may access funding says little of their obligations under the *Code*. Taxis are a different business model with different licensing requirements, including that a mandatory minimum percentage of their fleet

must be WAVs. The fact the legislature decided to provide funding to taxis, and not TNCs, is a matter of policy and does not affect TNCs obligations under the *Code*.

[93] Lastly, the *Act* also requires that licensees comply with all "other applicable laws": *Act*, s. 23.1(1)(c). There is no indication that this excludes the *Code*, and I find this weighs against any finding that the legislature did not intend for TNCs to be subject to the *Code*'s provisions.

[94] To summarize, there is not sufficient clarity to conclude that the legislature intended to exempt Uber from s. 8 of the *Code*. However, the Tribunal's interpretation that the per-trip fee's purpose was to incentivize Uber to provide WAVs is not correct. Rather, the purpose of the fee was to support accessibility in the PDV industry generally, as well as to offset the costs of regulating TNCs.

THE TRIBUNAL'S JUSTIFICATION ANALYSIS

[95] Although I have found that the per-trip fee was not intended to be paid by Uber instead of requiring it to provide WAVs, and that it is not clear that the legislature intended to exempt Uber from its obligations under the *Code,* Uber may nonetheless be justified in not providing wheelchair accessible services to its users. The consideration of whether Uber was so justified, must be made in the context of the applicable legislation – and in this case, the purpose of the per-trip fee plays a material role in the analysis. As will be discussed, the Tribunal erred in its interpretation of the purpose of the per-trip fee and this material legal error has rendered the decision indefensible under any standard of review. Furthermore, the Tribunal made other extricable errors of law in its application of the *Grismer* factors that were material to its analysis.

The Appropriate Standard of Review of the Tribunal's Justification Analysis

[96] Uber does not dispute the following determinations made by the Tribunal which establish that Mr. Bauer has a *prima facie* case of discrimination under s. 8 of the *Code*:

a) Mr. Bauer has a disability protected by the *Code*;

b) Uber provides a “service” within the meaning of the *Code*;

c) Mr. Bauer was adversely impacted by being unable to access Uber’s ride-hailing services; and

d) Mr. Bauer’s disability was a factor in the adverse impacts he experienced.

[97] The *Decision* at para. 89 correctly set out the test for whether a discriminatory service standard has a *bona fide* and reasonable justification, as established in *Grisme*r at para. 20:

> [89] To justify its lack of wheelchair accessible vehicles, Uber must prove:
>
> a. it adopted a non-wheelchair accessible service standard for a purpose or goal rationally connected to its function;
>
> b. it adopted its non-wheelchair accessible service standard in an honest and good faith belief that it was necessary to fulfill that purpose or goal; and
>
> c. its non-wheelchair accessible service standard is reasonably necessary to accomplish its purpose or goal in the sense that Uber cannot accommodate wheelchair users without incurring undue hardship: *Grismer*, para. 20.

[98] Uber argues that the Tribunal erred in its consideration of each prong of the *Grismer* test. The Tribunal argues that the reasonableness standard applies to its justification analysis because the Tribunal’s conclusion that Uber’s conduct was not justified involved questions of fact to which s. 59(1)’s correctness standard does not apply and s. 59(2)’s reasonableness standard does. I agree with the Tribunal that a Tribunal decision about whether conduct is justified will often turn on factual findings to which the standard of reasonableness applies under s. 59(2). However, that is not the end of the issue in the context of this case.

[99] Uber argues that the Tribunal’s incorrect interpretation of the purpose of the per-trip fee is an error of law of such a magnitude that it renders the Tribunal’s entire *Grismer* analysis to be unsupportable. I agree with Uber: when a tribunal makes an extricable legal error—like misinterpreting legislation—its resulting decision often will

be indefensible on any standard of review, even if it involves factual findings or an exercise of discretion: *McCulloch v. British Columbia (Human Rights Tribunal)*, 2019 BCSC 624 at para. 107. Moreover, as will be discussed, the Tribunal made other extricable errors at each stage of the *Grismer* analysis that are reviewable on the correctness standard.

[100] Before I consider the Tribunal's *Grismer* analysis I note that the *Grismer* framework for determining whether Uber's conduct was justified is not particularly well-suited to the particular circumstances of this case. In this case, unlike in many, the impugned service standard arguably flows logically from the legislation itself and its history. Given the history of the per-trip fee and the various statements made about it by the legislature and other government actors, including the Board, it does not seem unreasonable for Uber to have proceeded how it did by not providing WAVs itself, even though I have found that Uber's interpretation of the purpose of the per-trip fee is not correct. Uber paid its licensing fees as required and Uber's suggestion that the government make some of the per-trip fees available to Uber to use to facilitate or encourage the use and acquisition of WAVs by its drivers was not accepted by the government. It would not be unreasonable for Uber to conclude that the government had decided that Uber would pay the fee instead of being required to provide the accessible services itself. However, Uber's expectations and understanding are not determinative of Mr. Bauer's rights under the *Code*.

[101] The challenge in applying *Grismer* arises from the characterization of the impugned service standard, which is described as "non-wheelchair accessible service standard": *Decision* at para. 91. Uber's argument that the per-trip fee be paid *in lieu* of supplying wheelchair accessible services is akin to arguing that the *legislature*, not Uber, set a service standard, and therefore, Uber's following that service standard must be justifiable. *Grismer* is not well suited in these circumstances because Uber is in a position where it must justify its adherence to a service standard it arguably did not set. In some circumstances, strict application of the *Grismer* framework is not necessarily appropriate: *Quackenbush v. Purves*

Ritchie Equipment Ltd., 2006 BCSC 246 at para 52, *Sluzar v. City of Burnaby (No. 3)*.

Rational Connection

[102] To justify its conduct under the first prong of the *Grismer* analysis, Uber must show that it adopted its non-wheelchair accessible service standard for a purpose or goal that is rationally connected to its function.

[103] The *Decision* notes that Uber did not set out what purpose or goal is served by its non-accessible service standard (at para. 91.), and so first determines that Uber's goal in adopting its non-accessible service standard was to avoid any additional costs in offering this option. This factual finding is entitled to deference and I see nothing unreasonable about it.

[104] As the *Decision* notes at para. 102, cost concerns have been recognized as a legitimate or valid goal: see e.g. *Miele v. Famous Players Inc.*, 2000 BCHRT 5 at para. 55; *Hutchinson v. B.C. (Min. of Health)*, 2004 BCHRT 58 at para. 168. In *Council of Canadians with Disabilities v. VIA Rail Canada Inc*., 2007 SCC 15 [*VIA Rail*], the Supreme Court of Canada noted that the cost of accommodating the needs of a person seeking access is a factor in almost every case and is a legitimate factor to consider; however, the Court also warns against putting "too low a value on accommodating the disabled": at para. 128.

[105] The *Decision* at para. 102 distinguishes *Miele* and *Hutchinson* by finding that rather than cost avoidance, Uber's goal was avoidance of any cost risk, which is not, in the Tribunal's view, a legitimate goal for the purposes of the *Grismer* test:

> [102] As a business matter, Uber's desire to save money is understandable. However, I am not convinced that the avoidance of any cost risk is a legitimate or valid goal as contemplated in *Grismer* and *Meiorin*. The Tribunal has accepted that economic viability may be a legitimate goal: *Miele v. Famous Players Inc*., 2000 BCHRT 5 [Famous Players], para. 55*; Hutchinson v. B.C. (Min. of Health)*, 2004 BCHRT 58, para. 168. However, in those cases, the Tribunal was satisfied on the evidence that there were concrete cost concerns, impacting on the viability of the service providers: *Famous Players*, para. 55; *Hutchinson*, paras. 165-168. In *MacRae v. Interfor (No. 2)*, 2005 BCHRT 462, the Tribunal questioned whether the

> goal of cost avoidance was sufficient to satisfy the first step of the justification criteria: para. 138.

[106] The Tribunal ultimately concluded that the identified goal was not reasonable or legitimate because "it is about the risk of costs (rather than actual costs) and seeks absolute cost avoidance": at para. 104.

[107] I agree with Uber that the Tribunal erred in its application of this stage of the *Grismer* test. The first stage of the *Grismer* inquiry assesses the rational connection between the goal or purpose and the function being performed, in this case Uber's function as a ride-hailing business. The focus is not the validity of a particular standard, but the validity of its more general approach: *Hutchinson v. B.C. (Min. of Health)*, 2004 BCHRT 58 at para. 161. The purpose of this prong is to assess the legitimacy of the standard's purpose to insure it does not have a discriminatory foundation: *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4 [*McGill Health*] at para. 14.

[108] However, rather than reviewing the rational connection, the Tribunal engaged in an implicit weighing exercise, stating that "absolute cost avoidance" is not a legitimate goal. This position is contrary to guidance from the Supreme Court of Canada which has noted that in almost every case cost is a factor relied on to justify the continuity of a discriminatory barrier, and it is a legitimate factor to consider: *VIA Rail* at para. 128. The fact that Uber may seek to avoid even relatively insignificant costs does not render the goal illegitimate at this stage of *Grismer*, as the inquiry is solely focussed on whether the goal is rationally connected to Uber's function.

[109] The Tribunal erred by instead assessing the reasonableness of Uber's goal, rather than assessing its rational connection. The Tribunal sets out at para. 106:

> Uber has not shown that its cost-avoidance goal is integral to its ride-hailing function. Instead, Uber's evidence is that it can and does function as a ride-hailing business while offering wheelchair accessible vehicles via its app in Toronto and "many other cities" across North America.
>
> [Emphasis added.]

[110] Respectfully, this is not the standard Uber is required to meet at this stage of *Grismer*. The first prong of *Grismer* inquires only as to whether the goal is rationally connected to Uber's function as a ride-hailing business, not whether it is *integral* to this function. Uber is not required to establish at this stage that the costs of providing the services are so significant as to impact its viability; this analysis is better saved for the third prong of the *Grismer* test. The Tribunal's approach inappropriately raised the standard Uber is required to meet from a rational connection to an integral one.

[111] In my view, the Tribunal's application of this stage of the *Grismer* test is wrong at law. Such an error renders this part of the decision indefensible under the correctness, reasonableness, or even patent unreasonableness standard: *The Parent obo the Child v. The School District*, 2020 BCCA 333 at paras. 56-61

[112] The Tribunal should have considered whether Uber adopted its non-wheelchair accessible service standard for a purpose or goal that is rationally connected to its function without consideration of the irrelevant factors identified above. Furthermore, in the particular circumstances of this case, whether there is a rational connection must be considered in the context of the proper interpretation of the purpose of the per-trip fee as I have determined above.

Good Faith and Honest Belief

[113] At this stage, Uber must show that it adopted its non-wheelchair accessible service standard in a good faith and honest belief that it was necessary to fulfil the identified purpose or goal.

[114] The Tribunal stated the following at para. 114 of the *Decision*:

> …the question before me is whether Uber adopted its non-wheelchair accessible service standard in good faith, and in the belief that this standard was necessary for Uber to meet its ride-hailing purposes.
>
> [Emphasis added]

[115] The Tribunal erred by misidentifying Uber's purpose at this stage of the test. The Tribunal had concluded that Uber's purpose in adopting the service standard

was cost-avoidance. The inquiry the Tribunal was required to perform was to determine whether it adopted its service standard in good faith and in the belief that it was necessary to meet its cost-avoidance purpose. The purpose of this stage of inquiry is to assess the legitimacy of Uber's *intent*.

[116] The Tribunal erred by conflating Uber's function, a ride-hailing service provider, with the purpose for which it adopted its non-wheelchair accessible service standard, cost avoidance. The question the Tribunal was required to consider is whether Uber adopted its service standard in an honest and good faith belief it was necessary to fulfill its *cost-avoidance purpose*, not its *ride-hailing function*.

[117] As with the first step of the *Grismer* test, the Tribunal's application of the second stage is wrong at law. Its decision in this respect is therefore indefensible under any standard of review.

[118] I note here that it is likely, although not inevitable, that most policies adopted for cost-avoidance or economic efficiency purposes by private service providers would pass the first two stages of the *Grismer* test: see e.g. *Via Rail* at para. 128. This is not inconsistent with the purpose of the first two prongs. As the Supreme Court of Canada elaborates in *McGill Health*, their purpose is to assess whether the foundation of the policy is discriminatory. The pursuit of cost reduction, for its own sake, does not rest on a discriminatory foundation. In the absence of evidence of a costless accommodation being available, or bad faith of the service provider, these prongs will generally be met.

Accommodation Short of Undue Hardship

[119] Policies that pass the first two stages of the *Grismer* analysis will not necessarily be justifiable at the end of the day. The *Code* imposes an obligation on those making services available to the public to reasonably accommodate individuals with disabilities, and it recognizes that there is a cost to such accommodation. It is the third stage, the undue hardship analysis, that determines the justifiability of *prima facie* discriminatory policies: *McGill Health* at para. 14.

[120] The Tribunal set out the test Uber must meet:

> [119] In this case, Mr. Bauer has been denied access to transportation services because of a physical barrier. That physical barrier is due to Uber's lack of wheelchair accessible services. Uber can only justify this barrier if it is "impossible to accommodate" Mr. Bauer without experiencing undue hardship: *VIA Rail*, para. 121.
>
> [120] The duty to accommodate is a positive duty because it serves a core purpose of human rights law, substantive equality: *Via Rail*, paras. 122 and 183. Independent access to the same comfort, dignity, safety, and security as non-wheelchair users, is a fundamental human right for people who use wheelchairs: *Via Rail*, para. 162. In this context, the duty to accommodate means services that are equally accessible to wheelchair users, short of undue hardship to Uber: *Via Rail*, paras. 122 and 161-163.

[121] The Tribunal concluded that Uber has not reasonably accommodated Mr. Bauer and other wheelchair users by paying the per-trip fee: *Decision* at paras. 123-126. The Tribunal found that the per-trip fee does not address Mr. Bauer's ability to access Uber's services, and that its licensing requirements do not alleviate it of its obligations under the *Code*: at paras. 124-126. In coming to this conclusion, the Tribunal relied on its erroneous interpretation of the purpose of the per-trip fee as being to incentivize Uber to provide wheelchair accessible services.

[122] The Tribunal also concluded that paying more than the per-trip fee would not cause Uber undue hardship: *Decision* at para. 130. On this point, the Tribunal stated that it is Uber's obligation to establish undue hardship, and that Uber provided insufficient evidence to establish it: *Decision* at para. 132.

[123] The Tribunal's analysis is predicated on an erroneous interpretation of the legislature's intent behind the per-trip fee as being to incentivize Uber to provide WAVs. Guided by this interpretation, it is not surprising that the Tribunal concluded that Uber would not suffer undue hardship by accommodating Mr. Bauer and other wheelchair users. If the purpose of the fee was to incentivize Uber to provide WAVs, then it logically follows that providing them would not constitute undue hardship. However, as discussed above, I do not agree that the purpose of the fee was to incentivize Uber to provide WAVs.

[124] While I do not agree with Uber that the legislature intended Uber to pay the fee *in lieu* of meeting its obligations under the *Code* directly, the legislature intended the fee to support the provision of accessible services in the industry more generally and to offset the costs of maintaining accessibility in the industry. This is a very different context than one where Uber is being incentivized to provide WAVs by its licensing provisions. The *Code* must be applied in the context of the legislation that governs the provision of services at issue: *R.R. v. Vancouver Aboriginal Child and Family Services Society*, 2025 BCCA 151 at para. 164. The Tribunal did not do so in this case.

[125] Uber has an obligation to accommodate wheelchair users up to the point of undue hardship, but what constitutes undue hardship is a contextual and fact specific question. On this point, I find the guidance of the Saskatchewan Court of Appeal of assistance:

> What constitutes *undue hardship* is a question that depends on the circumstances and the legislation governing each case, but the relevant factors may include: financial cost, economic conditions or viability of the employer, workplace safety, quality of service provided, disruption of a collective bargaining agreement, problems with the morale of other employees, interchangeability of work force and facilities, and the size of the employer's operation (see, for example: *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*, 1990 CanLII 76 (SCC), [1990] 2 SCR 489 at 520–521; *Canada (Attorney General) v Gallinger*, 2022 FCA 177 at para 47, 474 DLR (4th) 532; *Westfair Foods Ltd. v United Food and Commercial Workers, Local 1400*, 2007 SKCA 22 at para 18, [2007] 6 WWR 59, leave to appeal to SCC refused 31985 [*United Food*]; *VIA Rail* at paras 123–128; and *Renaud* at 984).
>
> [*Baildon (Rural Municipality) v. Gronvold*, 2024 SKCA 73 at para. 20.]

[126] Whether Uber has reasonably accommodated Mr. Bauer is an inquiry that asks whether Uber has accommodated Mr. Bauer to the point of undue hardship: *VIA Rail* at para. 130. Undue hardship, in turn, is a flexible threshold that is applied contextually based on a wide range of factors, including the governing legislation.

[127] The purpose of the per-trip fee forms part of the contextual analysis the Tribunal must perform in order to determine what constitutes undue hardship, and whether Uber has met that threshold. It is important to remember that the duty to

accommodate in s. 8 of the *Code* is limited by the words “reasonably necessary” and “undue hardship”, which although different, express the same concept: *VIA Rail* at para. 133. Practicality of accommodating the affected class of users also plays a role in this analysis: *VIA Rail* at para. 130. When it considered whether the undue hardship stage of the test had been met, the Tribunal should have considered the cost to Uber, the practicality and reasonableness of providing WAVs, the relevant use of government funding, all within the context of the proper interpretation of the purpose of the per-trip fee. Neither Uber nor the Tribunal properly interpreted the purpose of the per-trip fee. The Tribunal’s approach taken to this step of the test, including the evidence requested and provided would likely have been different had the parties approached the question with the benefit of the proper interpretation of the intent of the legislation.

[128] Unlike with the first two prongs of the *Grismer* test, the result of the proper approach to the third stage is not as clear. As the Tribunal stated, the onus is on Uber to establish that it accommodated wheelchair users like Mr. Bauer to the point of undue hardship and the Tribunal noted the lack of evidence provided by Uber on the cost implications of providing wheelchair accessible options multiple times in the *Decision*. But, as stated above, different evidence and considerations would have been relevant had the parties approached the issue with the correct purpose of the legislation as a foundation.

[129] While undue hardship is a contextual standard, it remains a high bar as the court will be wary not to undervalue accommodating the rights of those with disabilities: *VIA Rail* at para. 128. People with disabilities have a right to the same access as those without disabilities, and the law imposes a duty on everyone to do whatever is reasonably possible to accommodate this right: *VIA Rail* at para. 128.

[130] Nonetheless, the Tribunal must consider the undue hardship analysis within the context of the proper interpretation of the purpose of the legislation. In this case, that requires the Tribunal to consider whether paying the per-trip fee and requiring

Uber to provide WAVs would amount to undue hardship, considering the relevant factors within the context of the governing legislation.

[131] The Tribunal's misinterpretation of the purpose of the per-trip fee goes to the core of the Tribunal's analysis of the undue hardship component of the *Grismer* test. Such an error renders the decision on this prong of the test indefensible on any standard of review and it should be set aside.

DISPOSITION

[132] The *Decision* is remitted to the Tribunal for reconsideration in accordance with these Reasons for Judgement. My determination of the purpose of the per-trip fee does not lead to an inevitable conclusion with respect to the justifiability of Uber's conduct, particularly in respect of whether Uber has met the undue hardship threshold. Consequently, it would not be appropriate to set aside the *Decision* and dismiss Mr. Bauer's complaint: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 51; *Allman v. Amacon Property Management Services Inc*., 2007 BCCA 302.

[133] Given my conclusion, it is not necessary for me to consider whether the Tribunal erred in concluding that s. 29(1)(e)(i) of the *Act* and s. 24.1(2) of the *Regulation* do not conflict with s. 8 of the *Code* to the extent they require Uber to pay a per-trip fee for trips taken in non-accessible passenger directed vehicles.

[134] No party seeks their costs, and no order is made as to costs.

"Majawa J."