

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 182

Date: 2025 10 28  
Docket: QBG-SA-01022-2019  
Judicial Centre: Saskatoon

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BETWEEN:

S-I MANAGEMENT LIMITED

PLAINTIFF

- and -

CITY OF SASKATOON

DEFENDANT

**Counsel:**

Casey R. Churko and Adam Bordignon  
Caroline J. Smith and Caroline C. Seshadri

for the plaintiff  
for the defendant

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JUDGMENT  
October 28, 2025

ELSON J.

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## **Introduction**

[1] The phrase “vehicle-for-hire” is a term of art that has come to be identified with the business of hired passenger transport, principally in urban settings. Originally, the term was applied to non-motorized modes of transport, such as horse drawn carriages. In time, especially as regulation of hired passenger transport developed, the term became associated with taximeter cabs (taxicabs or taxis) and limousines. More recently, it has included “transportation network” operations that use specific technology which allows customers to obtain hired passenger transport.

[2] This putative class action arises from the introduction in Saskatoon of the licencing and regulatory framework by which transportation network companies are now permitted to operate in the city. This framework came through the City of Saskatoon [City] enacting bylaws, first on December 17, 2018 and then on September 30, 2019, that changed the landscape for the licencing and regulation of vehicles-for-hire. Prior to the changes, the City limited its licencing and regulation scheme to drivers, owners and brokers of taxis. The changes resulted in licencing of “transportation network companies” [TNCs] or, singularly, a TNC.

[3] The plaintiff owns taxi licences that had been obtained before the changes described above. It brings this proposed class action on behalf of it and other taxi operators and licence holders. The action asserts that the City acted wrongfully in enacting the bylaws that now permit TNCs to operate in Saskatoon. This assertion is based on two legal arguments. The first argument is that the City’s actions have created separate schemes for vehicle-for-hire services that have denied class members’ constitutional rights to equality and equality before the law. This argument engages section 15(1) of the *Canadian Charter of Rights and Freedoms*. The second argument is that the separate schemes have significantly diminished the value of the class members’ licences, resulting in a form of *de facto* expropriation.

[4] The plaintiff now applies to certify this action. Based on my finding that the pleaded action fails to disclose a reasonable cause of action, the application must be dismissed. My reasons for so deciding follow in this judgment.

## **Background**

[5] The Court received considerable evidence in relation to this application. Much of it pertained to the City’s summary judgment application and is not specifically relevant to certification. That application has been sequenced to be heard after the

certification application is decided. Other evidence, not specifically pertaining to certification, provides context within which certification issues may be more easily understood.

[6] Insofar as certification is concerned, much of the evidence presented is not disputed. In particular, there is no dispute about the state of vehicle-for-hire regulation both before and after December 17, 2018. There is also little dispute about the City’s information gathering and consultation initiatives leading to the bylaw changes in 2018.

[7] Historically, the City has regulated vehicle-for-hire services pursuant to the authority granted to it by the applicable provincial legislation. Prior to 2018, this authority arose exclusively from section 8 of *The Cities Act*, SS 2002, c C-11.1. At that time the bylaw in place was Bylaw No. 9070, entitled *The Taxi Bylaw, 2014 [Taxi Bylaw]*.

[8] The authority to enact municipal vehicle-for-hire bylaws changed somewhat in 2018. On May 30 of that year, Royal Assent was granted for more specific legislation in the form of *The Vehicles for Hire Act*, SS 2018, c V-3.2. This statute, proclaimed in force on December 14, 2018, addresses regulatory aspects for the operation of a “transportation network” and a “transportation network company”. Among the statute’s regulatory provisions, it stipulates two things in sections 3 and 4. Under section 3, *The Vehicles for Hire Act* prohibits a TNC from carrying on operations through the use of a transportation network, unless it held a licence to do so, or unless otherwise authorized by the relevant municipality to do so. Under section 4, the statute expressly grants municipalities the power to make bylaws respecting transportation networks and TNCs. Included in this power is the ability to control licencing of a transportation company’s operations. In this context, it should be noted that section 2 of *The Vehicles for Hire Act* specifically defines a “transportation network” and a

“transportation network company” as follows:

2 In this Act:

...

“**transportation network**” means, subject to the regulations, an online enabled application, a digital platform, a software program, a website or other system or technology platform offered, used or facilitated by a transportation network company to enable a person to obtain vehicle-for-hire service;

“**transportation network company**” means a person or other prescribed entity that offers, uses or facilitates a transportation network;

[9] Three days after *The Vehicles for Hire Act* became law, the City enacted Bylaw No. 9548, entitled *The Transportation Network Company Bylaw, 2018 [TNC Bylaw]*, which provided for the licencing and regulation of transportation network companies. Both the *Taxi Bylaw* and the *TNC Bylaw* were repealed on September 30, 2019, with the enactment of Bylaw No. 9651, entitled *The Vehicles for Hire Bylaw, 2019 [Vehicles for Hire Bylaw]*.

*Taxi Bylaw*

[10] The *Taxi Bylaw* included various provisions related to the licencing and regulation of taxi services. To understand the possible significance of these provisions, it may be helpful to note certain terms that were defined in the *Taxi Bylaw*. Among the defined terms, there are definitions for: (1) a “taxi”, “taxicab” or “cab”; (2) a “taxi driver”; (3) a “taxi owner”; (4) a “taxi licence”; (5) a “broker”; and (5) a “brokerage”. Although not listed in the order in which they appear in the *Taxi Bylaw*, these definitions read as follows:

2. In this Bylaw:

...

- (t) **“taxi”, “taxicab” or “cab”** means a vehicle for hire that
  - (i) is registered in class PT; and
  - (ii) is equipped with a taximeter or equipment designed to calculate a passenger fare based on distance travelled and standing time;
- (u) **“taxi driver”** means a person licensed to drive a taxi pursuant to this Bylaw, whether he or she is the owner of the taxi or is an agent, lessee or employee of the taxi owner;
- (w) **“taxi licence”** means a licence from the City which grants to the holder thereof the running rights to operate a taxi in the City;
- (x) **“taxi owner”** means a person granted a taxi licence to operate a taxi in the City;
- (b) **“broker”** means a person who accepts calls in any manner for the dispatch of taxis and who dispatches taxis licensed under this Bylaw;
- (c) **“brokerage”** means the general business of a broker and shall be deemed to include the land and premises where the business is carried on;
- (z) **“wheelchair accessible taxi”** means a taxi that:
  - (i) is specifically designed to carry persons with disabilities;
  - (ii) is equipped with a mechanical device that can load, transport and unload a person using a wheelchair or other mobility aid without that person having to leave the wheelchair or other mobility aid; and
  - (iii) complies with Canadian Standards Association standard D409-92.

[11] The *Taxi Bylaw* contained specific licencing requirements, beginning with the imperative that no person shall drive a taxi, operate a taxi, or carry on the

business of a taxi brokerage in the City unless that person held the requisite licence from the City. It then set out the City's authority to issue licences for a taxi, a broker, a taxi driver, a wheelchair accessible taxi, a temporary wheelchair accessible taxi, and a seasonal taxi. Further to the issue of licences, section 6 of the *Taxi Bylaw* stipulated that the City had the power to: (1) limit the number of taxis that operated in Saskatoon; (2) determine the types of licences that may be granted; and (3) determine the manner in which any licence is to be granted. Sections 8 and 9 went on to stipulate specific limits on the number of taxi licences, seasonal taxi licences and wheelchair accessible taxi licences. The *Taxi Bylaw* also provided for the transfer of taxi and wheelchair accessible taxi licences, either by sale, gift bequest or other form of transfer.

[12] The *Taxi Bylaw* also stipulated that the City could impose conditions on certain licences and it also set out specific obligations for a taxi broker, such as maintaining a permanent office in the city where the business of the taxi brokerage is conducted.

*Events Between October 2014 and December 2018*

[13] According to the affidavit evidence filed on behalf of the City, there were developments that prompted City officials, including members of the Saskatoon City Council [Council], to consider permitting transportation networks to operate in Saskatoon. This consideration became more significant when a representative of Uber Technologies Inc. [Uber] contacted the City and requested a meeting about the prospect of it entering the Saskatoon market as a TNC. Following that contact, the City's administration engaged in an information gathering exercise that carried on for the next two years, until the fall of 2016. During that exercise, City officials gathered information from other cities – some of which had experience with TNCs – as well as from representatives of Saskatchewan Government Insurance, representatives of the Province of Saskatchewan [Province] and individuals in the local taxi and limousine

industry.

[14] It should be noted that, during the information gathering exercise, Council had taken the position that, given the Province’s current regulatory scheme for “black cars and limousines”, the Province would be in a better position to take on the responsibility for the regulation of TNCs. Council also resolved to communicate its position to the Province. In response, the relevant minister advised the City that it considered municipalities to be “in the best position to ascertain how companies like UBER best fit into their community”. In short, the Province decided it would not become directly involved in the specific regulation of TNCs.

[15] After considerable information was gathered, the issue about permitting TNCs in Saskatoon came before the Council’s Standing Policy Committee on Transportation [Standing Committee]. This committee met with certain representatives of the existing vehicle-for-hire businesses in March 2016. After hearing from these representatives, the committee resolved, among other things, to ask the City’s administration to “engage with the industries, including taxi and limousine drivers and companies, to hear their concerns and issues regarding the matter”.

[16] Subsequently, the City’s administration created the TNC Steering Committee for the purpose of acting on that Standing Committee’s resolution. To serve that purpose, the TNC Steering Committee created a document entitled “Taxi Industry Stakeholder Engagement 2017”. This document set out a specific engagement plan for consultation with various stakeholders, especially representatives of the taxi and limousine industries. Specific questions relating to the impact of TNCs coming to Saskatoon and the need to change regulations were identified in the document.

[17] The affidavit evidence suggests that these consultations continued throughout 2017 and most of 2018. During this time, the Province agreed that, while it

would not directly regulate TNCs, it would enact the necessary legislation for municipalities to licence and regulate such operations. It was for this reason that *The Vehicles for Hire Act* was presented to the Legislature and subsequently enacted. As earlier noted, the City's enactment of the *TNC Bylaw* followed almost three days later.

[18] For the purposes of this judgment, it is not necessary to identify all the details of the *TNC Bylaw*. Suffice it to say that it stipulated licencing requirements for TNCs and permitted the City to impose any terms and conditions on a licence that is consistent with the intent of the bylaw. The *TNC Bylaw* also stipulated to operational requirements related to TNCs, their "affiliated drivers" (as defined in the regulations under *The Vehicles for Hire Act*) and vehicles that were used in TNC operations. There was also a provision for inspections to be conducted by City-appointed vehicle-for-hire service inspectors.

[19] As earlier noted, the City enacted the *Vehicles for Hire Bylaw* on September 30, 2019, at which time it also repealed the *Taxi Bylaw* and the *TNC Bylaw*. The *Vehicles for Hire Bylaw* is essentially an amalgam of the regulatory scheme in the two repealed bylaws. That said, a reading of it clearly shows a distinction between the regulation of taxi operations and the regulation of TNCs.

#### *Evidence of Scott Suppes*

[20] Before concluding my description of the background evidence, it is important to reference the main evidence presented by the plaintiff. In this regard, I refer to the affidavit evidence of Scott Suppes, the principal officer of the plaintiff.

[21] Mr. Suppes deposed that, as of the summer of 2019, the plaintiff held 16 of the 165 taxi licences issued by the City, including four of the five accessible licences. The Suppes Family Trust and Georgina Suppes, Mr. Suppes's mother, are shareholders in Cascade Holdings Inc., which holds one of the licences.

[22] Mr. Suppes also deposed that the plaintiff is a shareholder of both United Cabs Limited and Riide Holdings Inc., which companies together hold two of the four taxi broker licences issued by the City. He went on to explain that the other two taxi broker licences were held by Comfort Cabs Ltd. and Saskatoon Radio Cabs Ltd.

[23] According to Mr. Suppes, Riide Holdings Inc., of which the plaintiff is a shareholder, owns the business name “Riide Hail Communications”. Mr. Suppes further deposes that Riide Holdings Inc. applied for and received a TNC licence but does not currently operate, and does not wish to operate, as a TNC. Further, Mr. Suppes says he is unaware of any other information to suggest the plaintiff is in a conflict of interest with other potential class members on common issues.

[24] Mr. Suppes deposed to his understanding about the size of the class. His best information in this regard is contained in a list, described as a Plate Owner Information List, prepared by Carlo Triolo, the general manager of Riide Holdings Inc., and exhibited to Mr. Suppes’ affidavit. This document appears to list all taxi owners as of December 17, 2018. Based on this list, Mr. Suppes deposed to his belief that, as of December 17, 2018, there were 107 taxi owners who held 165 operating licences. It identifies 107 taxi licence owners and corresponding plate numbers.

[25] From reviewing the list, it may be noteworthy that, in some instances, the plate numbers are associated with more than one taxi licence owner. Some of the taxi licence owners are corporations, and others are individuals. At least one taxi licence owner is described as an estate. Mr. Suppes deposes that United Cabs Limited owns one taxi operating licence. This meant that, if one were to include the remaining three taxi broker licence owners, the total class size would be at least 110 persons (including corporate taxi operating licence owners).

[26] In terms of other specifics related to this action, Mr. Suppes deposed to

the following:

- a. most class members have a race, first language, ethnic or national origin or religion that differs from the majority of Canadians and which is more readily discernible when comparing them to the population of Saskatoon;
- b. exclusivity related to taxi operating licences has been a constant for class members from the time they purchased their licences to the passage of the *TNC Bylaw* on December 17, 2018;
- c. his opinion that the market value of all licences was adversely impacted after the *TNC Bylaw*;
- d. his opinion that taxi broker revenues have declined.

[27] Finally, Mr. Suppes deposed that he has been in regular communication with class members, including, in the case of corporations, with their shareholders, directors and officers. He further deposed that he has kept them informed of the preparation and progress of the class action and is aware of the responsibilities of a representative plaintiff. Based on this evidence, as well as the evidence of Mr. Suppes' described experience in dealing with litigation matters – including his participation in the drafting of this claim – he expressed the belief that the plaintiff would be able to properly represent the proposed class if the action is certified. He also exhibited to his affidavit a document entitled First Proposed Workable Method, which sets out a written litigation plan going forward.

### **The Pleadings - First Amended Statement of Claim**

[28] The initial statement of claim was issued on July 17, 2019. As the initial claim was issued before the enactment of the *Vehicles for Hire Bylaw*, its allegations

were largely confined to a complaint about the *TNC Bylaw*. The initial claim was amended, as the First Amended Statement of Claim, on December 13, 2021 (later filed with the Court on December 21, 2021). This was more than two years after the enactment of the *Vehicles for Hire Bylaw* on September 30, 2019. For the sake of brevity, I will refer to the First Amended Statement of Claim as the “amended claim”.

[29] The amended claim is not drafted in an easily readable way. It includes several irrelevant expressions of indignation that detract from a more helpful and understandable pleading of material allegations. It also tends to repeat allegations more often than necessary. Because of the way it is worded, my description of the amended claim is edited somewhat so that it conveys what I discern to be the pleading’s essential allegations.

[30] At the outset, the plaintiff pleads that it pursues this putative class action “on behalf of persons who held permanent taxi operating or broker licenses” in Saskatoon as of December 17, 2018. From there, it goes on to plead material facts which, according to the plaintiff, tend to show that the introduction of the *TNC Bylaw*, followed by the subsequent enactment of the *Vehicles for Hire Bylaw* has unfairly impacted members of the class.

[31] To support the complaint in the amended claim, the plaintiff pleads material facts related to the licencing and regulatory requirements that existed for taxi services in Saskatoon before December 17, 2018, and continued thereafter. With some editing on my part, the description of these regulatory requirements includes the following features:

- a. specific licencing requirements for operators of taxis and taxi brokerages;
- b. the licencing requirements were exclusive in nature such that:

- (1) persons without the required licence were prohibited from providing or dispatching small vehicle-for-hire services; and (2) the licence had value and could be bought and sold in an active market;
- c. regulation of the number of permanent taxi licences that could be issued, including a cap under the *Taxi Bylaw* of 160 licences plus five wheelchair accessible licences; and
- d. regulation of the “rates” charged by taxi drivers.

[32] The plaintiff pleads that, following the enactment of the *TNC Bylaw*, Uber Canada Inc. entered the Saskatoon market and began providing small vehicle-for-hire services that were essentially similar to those provided by class members. Because the regulatory requirements facing the members of the class continued in the same manner as it did before, the plaintiff says this meant that members of the class faced disadvantages relative to Uber’s situation. As described in the amended claim, these comparative disadvantages are alleged to include:

- a. extraordinary investment by class members;
- b. unlike Uber, taxi brokers are required to incur significant costs to maintain a permanent office and physical premises in the City (para. 9(a));
- c. unlike Uber, taxi brokers are required to maintain a minimum percentage of its fleet as accessible taxis and to have five accessible taxis available (para. 9(b));
- d. unlike Uber, class members are required to pay fees associated with purchasing, registering, and renewing taxi licences, including (but not limited to) an annual licence fee, a fee for a taxi window sticker,

and a fee for taxi identification;

- e. unlike Uber, class members are required to invest in in-car cameras, taximeters, signs and equipment to refurbish vehicles;
- f. unlike Uber, class members cannot vary their fares by:
  - i. charging more than the stipulated minimum;
  - ii. discounting;
  - iii. engaging in “surge pricing based on demand”;
  - iv. charge GST in addition to published fares;
  - v. charge an increased fare for accessible vehicles;
  - vi. charge a cancellation fee; and
  - vii. charge a debit transaction fee greater than that capped by the City.

[33] As a result of Uber not facing the burden of the costs faced by class members, the plaintiff alleges that Uber can afford to offer higher wages, thereby attracting taxi drivers away from class members. This, in turn, results in class members not having sufficient drivers to cover the vehicles in their fleets, resulting in lost revenue.

[34] The plaintiff pleads two causes of action arising from the aforementioned. As will be more specifically described later in this judgment, the plaintiff pleads a breach of section 15(1) of the *Charter*. This is essentially based on the assertion that the two regimes for vehicle-for-hire services discriminates against class members, who are members of racial, linguistic, ethnic or religious minorities.

[35] The second cause of action asserts that the *TNC Bylaw* and the *Vehicles for Hire Bylaw* caused a *de facto* expropriation of their property. More particularly, the plaintiff asserts that the loss of exclusivity resulting from the two bylaws caused the market value of their licences to drop significantly.

[36] I should note that the City served and filed a statement of defence to the plaintiff's first claim and an amended statement of defence to the amended claim. In turn, the plaintiff served and filed a formal reply to the amended statement of defence. Although I will allude to an aspect of the City's defence later in this judgment, I am satisfied that I need not note anything further about either the defence or the reply at this stage of the discussion.

### **Second Application for Certification**

[37] After the amended claim was filed, the plaintiff followed up with a new application for certification. In this second application, the plaintiff seeks certification of this action as a class action pursuant to section 6(1) of *The Class Actions Act*, SS 2001, c C-12.01 [CAA]. As requested, the Court is asked to find that the plaintiff has satisfied all five criteria stipulated in section 6(1).

[38] As for an identifiable class, the Court is asked to find that there is such a class, comprised of persons who, as of December 17, 2018, owned one or more permanent taxi or wheelchair accessible taxi licences issued by the City.

[39] The Court is also asked to identify four common issues to be determined at a common issues trial. With some minor editing related to the identification of the subject bylaws, the four common issues are described as follows:

1. Did *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019* infringe upon the equality rights of

class members under subsection 15(1) of the *Canadian Charter of Rights and Freedoms*? If so, is the infringement justified under section 1? If not, are compensatory, deterrence, symbolic, or vindictive damages a just and appropriate remedy?

2. Did *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019*, and in particular the loss of exclusivity in the provision of small vehicle for hire services, constitute a compensable partial or total taking of permanent taxi and wheelchair accessible taxi licences?
3. If damages are ordered for some or all class members, can they be assessed in the aggregate, and if so, how much should be awarded, and how should they be distributed?
4. Were *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019* passed in “bad faith”? If they were passed in “good faith”, does section 303.1 of *The Cities Act* provide a defence to all or any part of the claims?

### **Certification under Section 6(1) of *The Class Actions Act***

[40] The requirements for certification of a class action are well known. As already mentioned, these requirements are set out as criteria in section 6(1) of the CAA, which reads as follows:

**6(1)** Subject to subsections (2) and (3), the court shall certify an action as a class action on an application pursuant to section 4 or 5 if the court is satisfied that:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class;

- (c) the claims of the class members raise common issues, whether or not the common issues predominate over other issues affecting individual members;
- (d) a class action would be the preferable procedure for the resolution of the common issues; and
- (e) there is a person willing to be appointed as a representative plaintiff who:
  - (i) would fairly and adequately represent the interests of the class;
  - (ii) has produced a plan for the class action that sets out a workable method of advancing the action on behalf of the class and of notifying class members of the action; and
  - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

[41] As articulated in numerous authorities, a certification contest is not a test of the action’s merits. Rather, the criteria are to be considered in the context of the three accepted goals of class proceedings (judicial economy, access to justice and behaviour modification). The criteria provide a framework that allows for the meaningful realization of these three goals on a class basis. Within this framework the designated judge is to assess what is essentially a procedural question, namely, whether the action is appropriately prosecuted as a class action. See *Hollick v Toronto (City)*, 2001 SCC 68 at para 16, [2001] 3 SCR 158 [*Hollick*].

[42] The focus on the form of a proposed class action defines and informs the plaintiff’s burden to establish each of the certification criteria. Because certification is not a test of the merits, the burden is not unduly onerous, an observation discussed in *Hollick* at para 25. The plaintiff need only show “some basis in fact” to establish the four evidence-based criteria in section 6(1)(b) - (e). Of course, the cause of action criterion in section 6(1)(a) is not evidenced-based. It will be satisfied if the pleaded

claim meets the requirements, as set out in *The King's Bench Rules*, for disclosing a reasonable cause of action.

[43] In the aftermath of *Hollick*, the “some basis in fact” standard for the assessment of the evidence-based criteria has been a source of considerable argument and debate. At present, the controlling authority on the application of that standard is the Supreme Court of Canada judgment in *Pro-Sys Consultants Ltd. v Microsoft Corporation*, 2013 SCC 57, [2013] 3 SCR 477 [*Pro-Sys*]. In *Pro-Sys*, the Court rejected the defence submission that “some basis in fact” was synonymous with proof on the balance of probabilities. In doing so, Rothstein J. revisited the discussion in *Hollick* and characterized the “some basis in fact” standard as a “meaningful screening device”. While not synonymous with proof on the balance of probabilities, Rothstein J. articulated the view that something more than “symbolic scrutiny” is required. Specifically, Rothstein J. said the following at paras. 103-104:

[103] ... it has been well over a decade since *Hollick* was decided, and it is worth reaffirming the importance of certification as a meaningful screening device. The standard for assessing evidence at certification does not give rise to “a determination of the merits of the proceeding” (*CPA*, s. 5(7) [*Class Proceedings Act*, RSBC 1996, c 50]); nor does it involve such a superficial level of analysis into the sufficiency of the evidence that it would amount to nothing more than symbolic scrutiny.

[104] In any event, in my respectful opinion, there is limited utility in attempting to define “some basis in fact” in the abstract. Each case must be decided on its own facts. There must be sufficient facts to satisfy the applications judge that the conditions for certification have been met to a degree that should allow the matter to proceed on a class basis without foundering at the merits stage by reason of the requirements of s. 4(1) of the *CPA* not having been met.

[44] The analysis in *Pro-Sys* has been considered in several Saskatchewan authorities. These include such relatively recent cases as *Pederson v Saskatchewan*

(*Minister of Social Services*), 2016 SKCA 142 at paras 28-29, 408 DLR (4th) 661 [Pederson]; *G.C. v Merck Canada Inc.*, 2019 SKQB 42 at para 33; *MacInnis v Bayer Inc.* 2020 SKQB 307 at para 104; *Kish v Facebook Canada Ltd.*, 2021 SKQB 198 at para 12 and *Kane v FCA US LLC*, 2022 SKQB 69, 92 MVR (7th) 36, aff'd 2024 SKCA 86 at para 92, [2024] 11 WWR 341 [*Kane*].

### **Disclosure of a Cause of Action – Section 6(1)(a)**

#### *Relevant principles*

[45] The certification criterion in section 6(1)(a) of the CAA is the only element for which evidence is neither helpful nor admissible. It is strictly a pleadings-based stipulation, grounded on whether the plaintiff's claim, as worded, discloses a cause of action.

[46] With the 2015 amendments to the CAA, and some clarifying comments in *Pederson*, it is now well settled that the test engaged by section 6(1)(a) is the so-called "plain and obvious" test. This is the same longstanding test that Canadian superior courts apply to determine whether a pleading should be struck for failure to disclose a reasonable claim or defence. In Saskatchewan, the applicable rule for this test is Rule 7-9(2)(a) of *The King's Bench Rules*. The principles to be applied in the consideration of Rule 7-9(2)(a) (and former Rule 173 before that) are well known. They have been articulated in cases such as *Collins v Saskatchewan Rural Legal Aid Commission*, 2002 SKQB 201 at para 11; *Venture Construction Inc. v Saskatchewan (Ministry of Highways and Infrastructure)*, 2015 SKQB 70 at para 7, [2015] 10 WWR 467 [*Venture*], *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 and *Hollinger v SaskTel Centre*, 2024 SKKB 178, at para 35, aff'd 2025 SKCA 40.

[47] In *Venture*, this Court summarized the five essential principles to be

considered in a Rule 7-9(2)(a) application:

- a. the claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success;
- b. the jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt;
- c. the Court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case;
- d. the Court can strike all, or a portion of the claim; and
- e. the plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action.

[48] As I received the submissions of the plaintiff's counsel on the application of section 6(1)(a) of the CAA, I discerned him to be advancing the argument that the Court is obliged to apply a "liberal and flexible" approach, for the benefit of plaintiffs, when assessing the words of a proposed class action claim. While there is little doubt that the "plain and obvious" test is not particularly onerous, it would be a mistake to conclude that a "liberal and flexible" approach would excuse the pleading of a claim that omitted material facts needed to assert the essential elements for a cause of action. In this regard, I am satisfied that the kind of analysis identified in *Venture* applies equally to the disclosure of causes of action pleaded in class proceedings.

[49] This understanding is evident in *Kane*. In that case, the plaintiff in a proposed class action alleging defective motor vehicles pleaded negligence for both economic loss and personal injury. Based on the authority of recent judgments, this

Court concluded, at para. 113, that to support a disclosed cause of action for negligently caused economic loss, the plaintiff was obliged to plead material facts to support an “imminent” danger. As this was not done, the Court found that the cause of action for negligence was disclosed only to the extent that it alleged causation of personal injury.

[50] I make two other similar observations that pertain to submissions by the plaintiff’s counsel. These observations were specifically flagged by the City’s counsel.

[51] The first observation surrounds the plaintiff counsel’s position that section 6(1)(a) involves such a generous approach that it will give rise to a presumption that a cause of action is disclosed even in the face of drafting deficiencies. If this is put forward as a general proposition, I disagree with it. Where disclosure of a cause of action is at issue, it remains incumbent on the application judge to apply the “plain and obvious” test to resolve that issue. While the test is a generous one, it does not invoke a presumption. In saying this I accept that some drafting deficiencies may be curable through permissible amendments to a pleading. That said, it must be acknowledged that there are also instances where deficient pleadings are such that they are beyond repair.

[52] The second issue raised by the plaintiff’s counsel involves his submission that the disclosure of one cause of action is sufficient to meet the requirements of section 6(1)(a). While this submission is correct as a general statement, it must be understood that the application judge is still required to rule on each alleged cause of action. This understanding is readily apparent in *Frey v BCE Inc.*, 2006 SKQB 328, [2006] 12 WWR 545, where Gerein J. specifically addressed each of the seven pleaded causes of action despite concluding that only one could be certified.

*Pleaded Causes of Action: Section 15(1) of the Charter*

[53] The plea asserting a violation of section 15(1) of the *Charter* is set out in paragraphs 13-20 of the amended claim. Including the appearance of the amending

underlining and deletions, these paragraphs read as follows:

[13] Class members claim all appropriate and just remedies under s. 24(1) of the *Charter of Rights and Freedoms*, including

(a) ~~disgorgement of the unconstitutional revenues and taxes that Saskatoon earned because of the 2018 Bylaw and~~

(b) ~~damages to fulfil the functions of compensation, vindication of the class members' rights, and deterrence of future breaches~~ damages.

a. Discrimination

[14] Contrary to s. 15(1) of the *Charter of Rights and Freedoms*, the ~~2014 Bylaw and the 2018 Bylaw~~ 2018 and 2019 Bylaws: (a) enacted two legal regimes for the same service; and (b) created a segregated system for transportation service recipients and providers.

[15] Class members differed ed from the population of ~~Saskatoon~~ the City. Disproportionately, class members or their affiliates, beneficiaries, or shareholders ~~haved~~ a different race, first language, ethnic or national origin, and religion than the majority of Canadians in general and ~~Saskatoon~~ City residents in particular.

[16] By differently regulating

(a) “vehicle-for-hire services” and “taxi services” and

(b) “transportation network companies” and “affiliated drivers”, and taxi brokers, license holders, and “taxi drivers”

under the *2014, 2018, and 2018-Bylaws<sup>9</sup> Bylaws*, ~~Saskatoon~~ the Defendant violated the rights of class members to the equal benefit and protection of the law.

[17] The ~~2014 Bylaw, 2018, and 2018<sup>9</sup> Bylaws~~ differentially treated ed class members and Uber.

(a) The differential treatment ~~is~~ was arbitrary.

(i) Class members and Uber provided ed essentially the same small vehicle for hire services.

(ii) The *2014*, *2018* and *20189* *Bylaws* created arbitrary, artificial, and factually and legally immaterial and unsustainable distinctions between “taxi” and “vehicle-for-hire” services.

(iii) The distinction ~~did~~ not demonstrably justify the establishment of a segregated system of vehicle for hire services in the City.

(iv) There ~~are~~ were no material differences that ~~justify~~ justified the disparate ~~municipal~~ regulatory treatment of taxis and “transportation network companies”.

(b) The differential treatment ~~is~~ was discriminatory on the basis of colour, language, origin (ethnic and national), and religion.

(c) Because of the historical and subsisting disadvantages and prejudices in Canada, these minority groups entered the taxi industry and purchased taxi licenses in the City in disproportionate numbers.

(i) They were ~~prevented~~ precluded from entering professions and occupations requiring post secondary education that they had ~~from~~ in their countries of origin.

(ii) They were attracted to ~~Saskatoon~~ the City by a provincial immigrant investment program.

(iii) Owning taxi licenses allowed them to bring their family members from other countries to ~~Saskatoon~~ the City to drive on their licenses.

(d) Because of these characteristics, class members have ~~been~~ historically been disadvantaged, and the victims of stereotyping and prejudice.

(e) The *2018* and *2019* *Bylaws* imposed disproportionate burdens on these minority groups that

(i) perpetuated their historic disadvantage and

(ii) widened the gap between these ~~minority~~ groups and the rest of ~~Saskatoon~~ the City.

[18] The requirement that Uber accept only passengers who pay through an “electronic payment system” linked to their bank accounts and credit cards resulted in

(a) the churn of affluent Canadian passengers from taxis to Uber, and

(b) mandatory acceptance by taxis of a disproportionately high number of low income and other historically disadvantaged passengers.

[19] The *2014*, *2018* and *20189* *Bylaws* required class members (but not Uber) to accept passengers who abandoned dispatched vehicles and who ran off without paying their fare after vehicle for hire service ~~are~~ were provided to them. The inability of class members to require payment in advance or charge a cancellation fee exacerbated their disadvantage.

[20] As a result of ~~Saskatoon’s~~ the Defendant’s arbitrary and discriminatory differentiation between “vehicle for hire services” and “taxi services” under the *2014*, *2018*, and *20189* *Bylaws*, the constitutional rights of class members to the equal benefit and protection of the law without discrimination ~~have been~~ was infringed or denied.

[54] There is now no doubt that, in certain circumstances, civil actions can be pursued to enforce *Charter* rights. See *Vancouver (City) v Ward*, 2010 SCC 27 at para 4, [2010] 2 SCR 28. In the present case, the City does not dispute that state of the law. Rather, it asserts that, as pleaded, the plaintiff has failed to disclose a reasonable cause of action under section 15(1) of the *Charter*.

[55] Section 15(1) of the *Charter* reads as follows:

**Equality before and under law and equal protection and benefit of law**

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[56] As noted in longstanding authorities from the Supreme Court of Canada, the test for a *prima facie* violation of section 15(1) involves two-stage questions. The question posed at the first stage is whether the impugned law, either on its face or by its impact, creates a distinction based on the enumerated grounds or on grounds analogous thereto. If there is an affirmative answer to the first stage question, the second stage of the test poses the question whether the impugned law imposes a burden or denies a benefit “in a manner that has the effect of reinforcing, perpetuating, or exacerbating ... disadvantage”. See *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30 at paras 19-20, [2015] 2 SCR 548, *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para 25, [2018] 1 SCR 464, and *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 27, [2020] 3 SCR 113 [*Fraser*].

[57] In addressing the first stage of the test, it is important to note that there are two forms of distinction or – stated more directly – discrimination. One form presents itself as distinction or discrimination that is apparent on the face of the impugned law. This has occasionally been described as “direct discrimination”. The other form presents itself as distinction or discrimination arising from the disproportionate impact of the impugned law – an impact that exists even where the subject law is otherwise neutral in its direct application. At one time, this form of distinction or discrimination was described as “adverse effect discrimination”. See *Ontario (Human Rights Commission) v Simpsons-Sears Ltd.*, [1985] 2 SCR 536 at 551. Since then, it has come to be known as “adverse impact discrimination”. In *Fraser*, Abella J. defined the term as follows at para. 30 (citations omitted):

[30] It is helpful to start by defining the concept. Adverse impact discrimination occurs when a seemingly neutral law has a disproportionate impact on members of groups protected on the basis of an enumerated or analogous ground ... Instead of explicitly singling out those who are in the protected groups for

differential treatment, the law indirectly places them at a disadvantage ...

[Emphasis added]

[58] As posited by counsel for the City, the “disproportionate” nature of the impact in the above definition cannot be understated. I agree. My reading of the relevant jurisprudence on the point suggests that it is an essential element of adverse impact discrimination – without which a claim of adverse impact discrimination cannot be made out.

[59] This understanding is clearly articulated in *R v Sharma*, 2022 SCC 39, 486 DLR (4th) 579 [*Sharma*], where the Supreme Court of Canada dealt with an adverse impact argument in relation to the unavailability of conditional sentences for certain offences. The offender argued that the limitation on conditional sentences was too broad and unfairly discriminated against Indigenous offenders. The Court, in a 5-4 split decision, disagreed. A central focus in the Court’s analysis involved the disproportionate quality of an impugned law’s impact. The majority judgment, jointly penned by Brown and Rowe JJ., began the discussion with an observation, at para. 31, about the two steps to be considered (citation omitted):

[31] The first step examines whether the impugned law created or contributed to a *disproportionate impact* on the claimant group based on a protected ground. This necessarily entails drawing a comparison between the claimant group and other groups or the general population ...The second step, in turn, asks whether that impact imposes burdens or denies benefits in a manner that *has the effect of reinforcing, perpetuating, or exacerbating a disadvantage*. The conclusion that an impugned law has a disproportionate impact on a protected group (step one) does not lead automatically to a finding that the distinction is discriminatory (step two).

[Emphasis added]

[60] This was followed by two further observations in which the majority

emphasized: (1) the importance of disproportion in an asserted impact; and (2) the corresponding need for a proper comparison that will allow the disproportion to be discerned. In this regard, the majority wrote the following at paras. 39-41:

[39] Two questions arise. First, what is the *standard* by which courts should measure impact? And secondly, how may claimants *prove* impact?

[40] We start with the difference between impact and *disproportionate* impact. All laws are expected to impact individuals; merely showing that a law impacts a protected group is therefore insufficient. At step one of the s. 15(1) test, claimants must demonstrate a *disproportionate* impact on a protected group, as compared to non-group members. Said differently, leaving a gap between a protected group and non-group members *unaffected* does not infringe s. 15(1).

[41] The disproportionate impact requirement necessarily introduces comparison into the first step. As McIntyre J. explained in *Andrews* [[1989] 1 SCR 143]: “[Equality] is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others in the social and political setting in which the question arises” (p. 164; see also *Fraser* [2020 SCC 28, [2020] 3 SCR 113], at para. 55). This Court no longer requires a “mirror comparator group” (*Withler* [2011 SCC 12, [2011] 1 SCR 396], at paras. 55-64; *Fraser*, at para. 94). However, *Withler* confirms that comparison plays a role at both steps of the s. 15(1) analysis. At the first step, the word “distinction” itself implies that the claimant is treated differently than others, whether directly or indirectly (*Withler*, at para. 62, cited in *Fraser*, at para. 48).

[Emphasis added]

[61] In the present case, the plaintiff’s *Charter* claim, as framed in its pleading, is obviously a complaint of adverse impact discrimination. The amended claim pleads no material facts to support a cause of action for direct discrimination. Rather, it rests solely on the assertion of an impact on the proposed class, as members of a disadvantaged minority. In this context, it is important for the Court to determine whether the framing of this action, in the amended claim, is sufficient to disclose a

reasonable cause of action.

[62] In my view, paragraphs 13-20 fail to disclose a reasonable cause of action, primarily because they fail to plead any material facts which, if proved at trial, would establish the required disproportionate impact necessary for liability under section 15(1) of the *Charter*. I will explain.

[63] While the above recited passage from the amended claim includes the words “disproportionately” and “disproportionate”, the words are used in ways that do not support an allegation of adverse impact discrimination. As pleaded, they refer only to disproportion in the following specific respects:

- a. the disproportion of class members having a different race, first language, ethnic or national origin, and religion as compared to the majority of Canadians and Saskatoon residents (paras. 5 and 7(c));
- b. the disproportion of burdens imposed by the *TNC Bylaw* and *Vehicles for Hire Bylaw* (para. 7(e)); and
- c. the disproportion of low income and historically disadvantaged passengers that taxis are obliged to accept (para. 8(b)).

As accurately noted by the City’s counsel, none of these references plead to a disproportionate impact on the proposed class members, based on an enumerated or analogous ground, as compared to drivers for a TNC, such as Uber. At most, they arguably illustrate a gap between the two groups which, according to *Sharma*, is simply insufficient.

[64] In his submission to the Court, the plaintiff’s counsel relied on only one authority to support the disclosure of this cause of action, namely the pre-*Sharma*

judgment in *Metro Taxi Ltd. v City of (Ottawa)*, 2018 ONSC 509, 13 CPC (8th) 325 [*Metro Taxi No. 1*].

[65] To understand the decision in *Metro Taxi No. 1*, a brief review of the relevant facts is in order. In *Metro Taxi No. 1*, the City of Ottawa reviewed their vehicle-for-hire bylaws after Uber began operating in the city without facing any regulatory framework. After the review, Ottawa introduced new bylaws that created a new class of licences for what it described as “private transportation companies”, such as Uber. At the same time, the existing licencing regime for taxis was maintained. The taxi plate holders and brokers commenced a class action, asserting two causes of action, namely, negligent enforcement of existing taxi bylaws and discrimination under both section 15(1) of the *Charter* and the Ontario human rights legislation. The basis for the discrimination claim asserted that taxi plate licensees were members of a minority group and that, by allowing Uber to operate in the city, Ottawa was creating a distinction based on the enumerated grounds. R.J. Smith J. certified the action, including both pleaded causes of action. In addressing the claim for discrimination, the Court concluded that it was not plain and obvious that the claim for discrimination would not succeed.

[66] I find it notable that the Court in *Metro Taxi No. 1* did not specifically assess whether the plaintiffs’ pleading contained material facts which would be capable of informing a *disproportionate* impact relative to a *proper comparator group*. Indeed, R.J. Smith J. simply rejected Ottawa’s argument that a comparison to the Canadian population was inadequate. He concluded that this was an evidentiary issue better left to a common issues trial. See para. 53.

[67] I disagree with the approach followed in *Metro Taxi No. 1* and decline to follow it. More particularly, I am satisfied that the question of disproportion relative to an appropriate comparator group is an essential element of a section 15(1) civil claim.

It necessarily follows that material facts which, if proved, would establish that element must be pleaded. Absent such material facts, the *disproportionate* aspect of an adverse impact discrimination is not disclosed. In fairness to the Court in *Metro Taxi No. 1*, I suspect that, if it had the benefit of the majority's analysis in *Sharma*, it would likely have come to a different conclusion.

[68] As a further footnote to my comments about *Metro Taxi No. 1*, I think it noteworthy that, in the common issues trial that followed from certification, a different judge of the same court was not persuaded by the plaintiffs' *Charter* claim. See *Metro Taxi Ltd. v City of Ottawa*, 2024 ONSC 2725, 49 MPLR (6th) 171 [*Metro Taxi No. 2*]. After an analysis that relied heavily on the comments in *Sharma* about the importance of disproportion, including considerations about a proper comparator group and the need to prove a causation link between the challenged law and the discriminatory impact, M.E. Smith J. concluded, at para. 333 of *Metro Taxi No. 2*, that the evidence did not establish that the regulatory actions created a distinction based on an enumerated or analogous ground.

[69] In short, I find that the asserted cause of action, for a violation of section 15(1) of the *Charter*, has not been disclosed in the amended claim. It follows that this cause of action cannot be certified pursuant to s. 6(1)(a) of the CAA.

*Pleaded Causes of Action: de facto Expropriation*

[70] The plea asserting a *de facto* expropriation of the class members' property is set out in paragraph 21 of the amended claim. Again, including the appearance of the amending underlining and deletions, these paragraphs read as follows:

[21] The 2018 and 2019 Bylaws caused a *de facto* expropriation of property.

(a) Class members had proprietary interests in their permanent taxi ~~and brokerage~~ licenses.

- (i) Financial institutions lent money using taxi licenses as security.
  - (ii) ~~Saskatoon~~The Defendant provided a serial number on the licenses to permit them to be registered in the provincial Personal Property Security Registry.
  - (iii) Canadian courts have recognized taxi licenses as divisible property ~~that may be divided~~ in family property law proceedings and valued estate property in bankruptcy proceedings.
- (b) Until the *2018 Bylaw*, taxi licenses were an exclusive proprietary right to exclude those without licenses from providing small vehicle for hire services in the City.
- (i) The licenses granted owners an “exclusive right” to provide vehicle-for-hire services on a mileage-and-time basis.
  - (ii) The taxi industry in the City was built in ~~reasonable~~ reliance on exclusivity.
  - (iii) Without exclusivity, taxi licenses have no value or purpose.
  - (iv) Exclusivity was a critical part of the rights ~~Saskatoon~~the Defendant granted with taxi and ~~brokerage broker~~ licenses.
- (c) Taxi licenses have a market value.
- (i) Before the passage of the *2018 Bylaw*, each license had a market value of ~~approximately~~about \$250,000. The value ~~thereafter~~then significantly dropped.
  - (ii) ~~Saskatoon~~the Defendant created, and actively and deliberately encouraged, the growth in the market value of the taxi licenses, including by
    - (A) maintaining a cap on the number of taxi licenses issued,
    - (B) permitting and facilitating the sale of the taxi licenses,
    - (C) permitting the sale or lease of taxi licenses, and
    - (D) monitoring the market value of taxi licenses by requiring taxi license holders to provide a bill of sale when they transferred licenses.

(iii) ~~Saskatoon's~~ The Defendant's regulatory scheme created and maintained the market value of the taxi licenses.

(iv) Class members had a significant interest in the scheme's integrity.

(d) To continue to comply with the *2014 and 2019 Bylaws* despite having lost the foundational exclusivity that was the core feature of the bylaw, class members encountered costly competitive disadvantages that ~~have~~—jeopardized their financial solvency. ~~Saskatoon~~ The Defendant

(i) removed entry restrictions for “transportation network companies” but simultaneously

(ii) maintained burdens on taxi brokers and license owners.

(e) By allowing uber to operate as a brokerage and to dispatch an unlimited number of vehicles without taxi ~~brokerage broker~~ and operating licenses, ~~Saskatoon~~ the Defendant

(i) took away the exclusive right of ~~class member~~ taxi operators to provide small vehicle for hire services in the City and

(ii) destroyed the core property right of permanent taxi broker and operating license owners.

(f) ~~Saskatoon~~ The Defendant took both the exclusivity rights and the market value of taxi licenses.

(g) ~~Saskatoon~~ The Defendant took both customers and drivers that were formerly an exclusive right of class members before the *2018 Bylaw*.

(h) ~~Saskatoon~~ The Defendant did not pay compensation for taking the exclusivity.

(i) In taking away exclusivity, and in churning passengers to Uber from taxis, ~~Saskatoon~~ the Defendant imposed a 27¢ charge on each Uber ride, and became a *de facto* partner of Uber in the provision of vehicle for hire services that class members formerly had the exclusive right to provide.

[71] The term “*de facto* expropriation” refers to a common law cause of action where a property owner asserts that government regulatory conduct has effectively

expropriated that owner's property. Other labels for this cause of action include “*de facto* taking”, “constructive taking” and “constructive expropriation”.

[72] The two central authorities on *de facto* expropriation are the Supreme Court of Canada judgments in *Canadian Pacific Railway Co. v Vancouver (City)*, 2006 SCC 5, [2006] 1 SCR 227 [*CPR*] and *Annapolis Group Inc. v Halifax Regional Municipality*, 2022 SCC 36, [2022] 2 SCR 772 [*Annapolis*]. These judgments identify the test to be applied in determining whether such a claim can be made out. This test necessarily includes a description of the essential elements required to establish the claim. It should further be noted that the judgments were influenced by earlier judgments of the same Court in *Manitoba Fisheries Ltd. v The Queen*, [1979] 1 SCR 101 [*Manitoba Fisheries*] and *British Columbia v Tener*, [1985] 1 SCR 533 [*Tener*].

[73] In *CPR*, the appellant owned a 10-kilometre corridor of property in Vancouver, as part of an 1886 land grant. After the appellant began to discontinue rail operations in the corridor, a dispute arose between the parties about its ownership and future development. The respondent refused to purchase the land. Instead, in 2000, it adopted a bylaw that effectively froze redevelopment of the property and confined the appellant to uses that it regarded as uneconomical. The appellant filed a petition to strike the bylaw and seek compensation. At first instance, the chambers judge struck the bylaw but declined to order compensation. On appeal to the British Columbia Court of Appeal, the decision to strike was reversed. A further appeal to the Supreme Court of Canada was dismissed.

[74] Writing for a unanimous court, McLachlin C.J.C. directly addressed the appellant's argument that a government's act to deprive a landowner of all reasonable use of its land – standing alone – amounts to a *de facto* taking for which compensation is owed. In the Court's view, this argument failed to address the two requirements to establish a *de facto* taking. Relying on *Manitoba Fisheries* and *Tener*, McLachlin C.J.C.

identified the two requirements at para. 30:

30 For a *de facto* taking requiring compensation at common law, two requirements must be met: (1) an acquisition of a beneficial interest in the property or flowing from it, and (2) removal of all reasonable uses of the property (see *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)* (1999), 177 D.L.R. (4th) 696 (N.S.C.A.), at p. 716; *Manitoba Fisheries Ltd. v. The Queen.*, [1979] 1 S.C.R. 101; and *The Queen in Right of British Columbia v. Tener*, [1985] 1 S.C.R. 533.

[75] The Court concluded that neither of these requirements had been made out in the case before it. First, at paras. 32-33, the Court found nothing to suggest that the respondent had acquired a beneficial interest related to the land in question. While a forced transfer was not necessary, the acquisition of a beneficial interest – specifically related to the property – was essential.

[76] Secondly, at para. 34, the Court concluded that the subject bylaw did not prevent the appellant from using the land for railway purposes or leasing it for a use that is in conformity with the existing bylaw. Accordingly, it could not be said that the bylaw removed all reasonable uses of the property.

[77] In *Annapolis*, the considerations in *CPR* were revisited, albeit with a specific focus on clarifying the nature of a beneficial interest that would be acquired by the state entity. The majority judgment, jointly written by Côté and Brown JJ., found that the phrase “beneficial interest”, as used in *CPR*, required a broad definition, one that included an “advantage” in relation to the property that flowed to the state entity. Based on the relevant jurisprudence, including *CPR*, *Manitoba Fisheries and Tener*, the authors of the majority judgment wrote the following at paras. 38-40:

(3) Defining the Nature of a “Beneficial Interest”

[38] In our view, the foregoing jurisprudence — upon which the *CPR* test was expressly stated as resting — supports an understanding of “beneficial interest” as concerned with the

*effect* of a regulatory measure on the landowner, and not with whether a proprietary interest was actually acquired by the government. Conversely, that same jurisprudence supports the view that “beneficial interest”, as that term appears in the first part of the test stated in *CPR*, refers *not* to actual acquisition of the equity that rests with the beneficial owner of property connoting rights of use and enjoyment, but to an “advantage” flowing to the state. We say this for two reasons.

[39] First, to require actual acquisition would collapse the distinction between constructive (*de facto*) and *de jure* takings — a distinction which *CPR* explicitly preserves (paras. 30-37). Simply put, if a constructive taking requires an *actual* taking, then it is no longer constructive. It follows that the Court of Appeal’s requirement of an actual acquisition of the Annapolis Lands cannot be necessary to satisfy the *CPR* test for a constructive taking.

[40] Secondly, interpreting “beneficial interest” broadly (as meaning a benefit or advantage accruing to the state) ensures *CPR*’s coherence to *Manitoba Fisheries* and *Tener*, neither of which understood “benefits” in the strict equitable sense of that term. Again, the references to those authorities in *CPR* demonstrate that *CPR* merely sought to affirm, and not to alter, our law of constructive takings. This interpretation is supported by the explicit wording under the first part of the *CPR* test: “... a beneficial interest in the property *or flowing from it ...*” (para. 30 (emphasis added)). An interest flowing from the property affirms that a “beneficial interest” can be more broadly understood as an advantage, and need not be an actual acquisition.

[Emphasis added]

[78] From the foregoing discussions about *CPR* and *Annapolis*, I am persuaded that the two requirements described in *CPR*, and later clarified in *Annapolis*, inform the essential elements of an action for *de facto* expropriation. It necessarily follows that, when pursuing such a cause of action, a claimant must plead material facts which, if proved, will establish that the state entity’s regulatory action precipitated two outcomes: (1) that the state entity acquired a beneficial interest – understood to include an “advantage” – in or flowing from the subject property; and (2) removal of all

reasonable uses of the subject property.

[79] Applying this analysis to paragraph 21 of the amended claim, I am satisfied that the pleading is deficient and fails to disclose a reasonable cause of action. My conclusion is founded on two reasons. First, the pleading contains no material facts to support the conclusion that the City acquired a beneficial interest, whether characterized as an advantage or otherwise, from its enactment of the *TNC Bylaw* and the *Vehicles for Hire Bylaw*. The only reference in the pleading to any form of gain by the City is the \$0.27 charge it is said to have imposed on each Uber ride. While the receipt of this charge might arguably be characterized as an advantage, the pleading contains no suggestion that it reflects an interest in or flowing from the subject property, namely, the class members' taxi licences. As observed in *Altius Royalty Corporation v Alberta*, 2024 ABCA 105, [2024] 5 WWR 345, when addressing a claim for *de facto* expropriation, "... there must be some correspondence between the expropriated interest and the acquired interest." (para. 21). In my view, the amended claim does not plead material facts to establish any such correspondence.

[80] Second, the pleaded cause of action contains no material facts to suggest that the class members taxi licences have lost all reasonable uses. While they do plead loss of an "exclusive right" and loss of a "core property right", I cannot see these losses as the removal of all reasonable uses. Loss of exclusivity cannot reasonably be seen as a loss of all reasonable use. Moreover, the understanding I draw from *CPR* is that loss of market value, or some other diminution of value, cannot be seen as the equivalent of removing all reasonable uses.

[81] Accordingly, I find that the asserted cause of action for *de facto* expropriation has also not been disclosed in the amended claim. Again, it follows that this cause of action cannot be certified pursuant to section 6(1)(a) of the *CAA*.

[82] Before concluding the discussion on the application of section 6(1)(a) of the CAA, I must say that I decline to make any ruling related to the possibility that the plaintiff's action is barred pursuant to the immunity provision in section 302 of *The Cities Act*. Principally, my reasons for not ruling on this question is that my conclusions on the two asserted causes of action make such a ruling unnecessary. Having said all that, I think the City's argument on this point is compelling. In particular, I specifically agree with the City's counsel that neither of the causes of action asserted by the plaintiff are based on tortious liability.

[83] As I have found that neither of the claims in the plaintiff's amended claim disclose causes of action, as required by section 6(1)(a), it follows that the plaintiff's application for certification must be dismissed.

[84] Despite this finding, and on the assumption that I may be wrong in my analysis of the first criterion, I will go on to address the remaining certification criteria.

### ***An Identifiable Class – Section 6(1)(b)***

#### *Relevant Principles*

[85] The second criterion, stipulated by section 6(1)(b) of the CAA, is evidence of an identifiable class. The CAA defines a "class", in section 2 as "two or more persons with common issues respecting a cause of action or a potential cause of action; ..."

[86] The importance and definition of an identifiable class was discussed in *Western Canadian Shopping Centres Inc. v Dutton*, 2001 SCC 46 at para 38, [2001] 2 SCR 534 [*Dutton*], when dealing with an equitable class action. There, McLachlin C.J.C. explained the identifiable class criterion as follows at para. 38:

38 ... First, the class must be capable of clear definition. Class definition is critical because it identifies the individuals entitled

to notice, entitled to relief (if relief is awarded), and bound by the judgment. It is essential, therefore, that the class be defined clearly at the outset of the litigation. The definition should state objective criteria by which members of the class can be identified. While the criteria should bear a rational relationship to the common issues asserted by all class members, the criteria should not depend on the outcome of the litigation. It is not necessary that every class member be named or known. It is necessary, however, that any particular person's claim to membership in the class be determinable by stated, objective criteria ...

[Emphasis added]

[87] As observed in *Alves v First Choice Canada Inc.*, 2011 SKCA 118 at para 58, 342 DLR (4th) 427, the description of an identifiable class serves three purposes. It identifies, albeit with an objective definition, the persons who have a potential claim against the defendant. It also defines the parameters of the action by specifying the persons who will be bound by the result. Thirdly, it allows for identification of the individuals who will be entitled to notice in the event the action is certified.

[88] The judgment in *Hollick* makes it clear that the burden on a plaintiff to establish an identifiable class is not particularly burdensome. As noted by McLachlin C.J.C. at para. 19 of *Hollick*, "... the issue is whether there is a rational connection between the class as defined and the asserted common issues." Turning to the specifics of that exercise, the then Chief Justice wrote the following at para. 21:

21 The requirement is not an onerous one. The representative need not show that everyone in the class shares the same interest in the resolution of the asserted common issue. There must be some showing, however, that the class is not unnecessarily broad — that is, that the class could not be defined more narrowly without arbitrarily excluding some people who share the same interest in the resolution of the common issue. ...

### *Analysis*

[89] To repeat the proposed class for this action, the plaintiff simply presents

a class comprised of persons who, as of December 17, 2018, owned one or more permanent taxi or wheelchair accessible taxi licences issued by the City.

[90] The City’s only concern about the plaintiff’s proposed class rises from the cross-examination of two affiants presented by the plaintiff. In that proceeding, evidence was disclosed to the effect that taxi licences may be registered in the name of an individual who is not the true owner of that licence. This arises through the transfer of licences or plate numbers in order to arrange for extra votes at annual general meetings of the relevant taxi broker. Counsel for the City questioned whether an identifiable class could be described under such circumstances.

[91] While the City’s concern reveals a real problem, I am satisfied that it does not impact the finding of an identifiable class. As I read both *Dutton* and *Hollick*, the identification of a class is determined more by definition than it is whether Person A or Person B are in the class or not. If the action should eventually be certified, those issues will obviously have to be addressed and there may be disputes arising from them. That said, I am satisfied that they do not impact the Court’s decision at this stage of the proceeding.

[92] Accordingly, and putting aside the question about the presence of common issues – and on the assumption that I may be wrong in my conclusion on the cause of action criterion – I conclude that this action, with the proposed definition of the class, satisfies the identifiable class criterion under section 6(1)(b) of the CAA.

### **Common Issues – Section 6(1)(c)**

#### *Relevant principles*

[93] Section 6(1)(c) of the CAA requires that the claims of the class members raise common issues. As disjunctively defined in section 2 of the CAA, “common issues” are either: (a) common but not necessarily identical issues of fact; or

(b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts. From this definition, it is also notable that section 6(1)(c) includes the stipulation that such common issues need not predominate over issues which are particular to individual class members.

[94] Canadian courts have long understood that the common issues requirement is at the heart of class action certification proceedings. The most recent reaffirmation of this understanding by the Supreme Court of Canada is in *Pro-Sys*. There, at para. 106, Rothstein J. described the commonality requirement as the “central notion of a class proceeding”. In the same passage, he went on to recognize the wisdom of common litigation concerns being resolved in a central proceeding as opposed to “an inefficient multitude of repetitive proceedings”.

[95] When considering the common issues criterion, case management judges have frequently observed the general propositions which Strathy J. (as he then was) summarized in *Singer v Schering-Plough Canada Inc.*, 2010 ONSC 42, 87 CPC (6th) 276 [*Singer*]. These non-exhaustive propositions, drawn from the then leading authorities, have been directly or indirectly adopted by appellate courts across Canada, including the Saskatchewan Court of Appeal in *Pederson*. As recited from para. 140 of *Singer*, the summary reads as follows (citations omitted):

140 The following general propositions, which are by no means exhaustive, are supported by the authorities:

**A:** The underlying foundation of a common issue is whether its resolution will avoid duplication of fact-finding or legal analysis: ...

**B:** The common issue criterion is not a high legal hurdle, and an issue can be a common issue even if it makes up a very limited aspect of the liability question and even though many individual issues remain to be decided after its resolution: ...

**C:** There must be a basis in the evidence before the court to establish the existence of common issues: ... As Cullity J. stated in *Dumoulin v. Ontario* [[2005] OJ No 3961], at para. 27, the plaintiff is required to establish “a sufficient evidential basis for the existence of the common issues” in the sense that there is some factual basis for the claims made by the plaintiff and to which the common issues relate.

**D:** In considering whether there are common issues, the court must have in mind the proposed identifiable class. There must be a rational relationship between the class identified by the Plaintiff and the proposed common issues: ...

**E:** The proposed common issue must be a substantial ingredient of each class member’s claim and its resolution must be necessary to the resolution of that claim: ...

**F:** A common issue need not dispose of the litigation; it is sufficient if it is an issue of fact or law common to all claims and its resolution will advance the litigation for (or against) the class: ...

**G:** With regard to the common issues, “success for one member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent.” That is, the answer to a question raised by a common issue for the plaintiff must be capable of extrapolation, in the same manner, to each member of the class: ...

**H:** A common issue cannot be dependent upon individual findings of fact that have to be made with respect to each individual claimant: ...

**I:** Where questions relating to causation or damages are proposed as common issues, the plaintiff must demonstrate (with supporting evidence) that there is a workable methodology for determining such issues on a class-wide basis: ...

**J:** Common issues should not be framed in overly broad terms: “It would not serve the ends of either fairness or efficiency to certify an action on the basis of issues that

are common only when stated in the most general terms. Inevitably such an action would ultimately break down into individual proceedings. That the suit had initially been certified as a class action could only make the proceeding less fair and less efficient”: ...

[96] To establish the common issues criterion, the plaintiff must meet a two-part evidentiary test. The test requires some basis in fact to show: (1) that the proposed common issues actually exist; and (2) that they can be answered across the entire class. It is only in this way that the Court can assess whether the resolution of the issue will advance the litigation as a class action. See *Kuiper v Cook (Canada) Inc.*, 2018 ONSC 6487 at paras 98-99.

#### *Analysis*

[97] I now turn back to the four common issues proposed by the plaintiff. In this discussion, it is probably helpful to repeat the list here. As advanced by the plaintiff and its counsel, the proposed common issues are as follows:

1. Did *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019* infringe upon the equality rights of class members under subsection 15(1) of the *Canadian Charter of Rights and Freedoms*? If so, is the infringement justified under section 1? If not, are compensatory, deterrence, symbolic, or vindictive damages a just and appropriate remedy?
2. Did *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019*, and in particular the loss of exclusivity in the provision of small vehicle for hire services, constitute a compensable partial or total taking of permanent taxi and wheelchair accessible taxi licences?

3. If damages are ordered for some or all class members, can they be assessed in the aggregate, and if so, how much should be awarded, and how should they be distributed?
4. Were *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019* passed in “bad faith”? If they were passed in “good faith”, does section 303.1 of *The Cities Act* provide a defence to all or any part of the claims?

[98] The City is not opposed to certification of Common Issue 1, but has concerns about Common Issues 2, 3 and 4.

[99] With respect to Common Issue 2, the City’s concern is that it assumes that members of the class lost exclusivity. The City posits that the issue should more appropriately be described in a general way, without assuming loss of exclusivity.

[100] I agree with the City’s position. Common Issue 2 should be rephrased so that it can generally ask the question whether the subject bylaws resulted in a compensable partial or total taking of the class members’ licences. In my view, the class members would not sustain any obvious prejudice as they would still be able to argue that there was a loss of exclusivity and that such a loss is compensable for *de facto* expropriation.

[101] Of course, it bears repeating that these comments rest on the assumption that I was wrong in concluding that loss of exclusivity could not amount to *de facto* expropriation.

[102] The City is flatly opposed to Common Issue 3, positing that there is no basis in fact for putting forward any common issue on the question of aggregate damages. In this regard, it should be noted that the plaintiff served and filed an affidavit

I had not earlier alluded to. That affidavit was sworn by Dr. James Cooper, described as a transportation professional specializing in ground transportation. His affidavit includes an opinion that aggregate damages may be awardable with a methodology that considers mean values and three specific principles. The City posits that Dr. Cooper's evidence simply does not meet the "some basis in fact" test.

[103] All things considered, I am prepared to include the proposed question as a common issue. While I accept there may well be flaws in Dr. Cooper's view, it does offer a methodology. Noting that methodology and following the perspective Laing C.J.Q.B. (as he then was) adopted in *Holland v Saskatchewan*, 2010 SKQB 32 at para 43, [2010] 7 WWR 369, I find it is not inappropriate to include possible assessment of aggregate damages as a common issue.

[104] Turning to Common Issue 4, the City agrees that a common issue related to the application of section 303.1 of *The Cities Act* should be included, but it argues that it is unnecessary for there to be any reference to "bad faith" in the common issue. Given that the wording of section 303.1 expressly incorporates the question of "good faith" in determining whether the defence applies, I agree that a more generally described common issue is preferable.

[105] Accordingly, and on the assumption that I may be wrong in my conclusion on the cause of action criterion, I conclude that the claims of the class members satisfy the criterion under section 6(1)(c) of the *CAA* by raising the following common issues:

1. Did *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019* infringe upon the equality rights of class members under subsection 15(1) of the *Canadian Charter of Rights and Freedoms*? If so, is the infringement justified under

section 1? If not, are compensatory, deterrence, symbolic, or vindictive damages a just and appropriate remedy?

2. Did *The Transportation Network Company Bylaw, 2018* and *The Vehicles for Hire Bylaw, 2019* result in a compensable partial or total taking of permanent taxi and wheelchair accessible taxi licences?
3. If damages are ordered for some or all class members, can they be assessed in the aggregate, and if so, how much should be awarded, and how should they be distributed?
4. Does section 303.1 of *The Cities Act* provide a defence to all or any part of the class members' claims?

**Preferable Procedure – Section 6(1)(d)**

[106] There is no dispute that a class action would be the preferable procedure for the resolution of the common issues. I agree.

[107] Accordingly, and on the assumption that I may be wrong in my conclusion on the cause of action criterion, I conclude that this action satisfies the preferable procedure criterion under section 6(1)(d) of the *CAA*.

**Suitable Representative Plaintiff – Section 6(1)(e)**

[108] There is no substantial dispute about the plaintiff serving as a suitable representative for the class. That said, the City's only concern is that the plaintiff's written litigation plan is now somewhat dated.

[109] I share the City's concern. Accordingly, if I had found the cause of action criterion to have been satisfied, I would have declined to certify the action but granted the plaintiff leave to serve and file an updated litigation plan.

**Conclusion**

[110] For the above reasons, I dismiss the plaintiff's application for certification.

[111] The City shall have its costs of the certification application. The amount of those costs may be spoken to at the request of any of the parties. Having said that, as I retire from the Court effective November 1, such a request will have to come before another judge to be assigned by the Chief Justice.

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R.W. ELSON J.