

JAN 27 2020



No. **S-200930**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

BETWEEN:

**YELLOW CAB COMPANY LTD., BLACK TOP CABS LTD., MACLURE'S CABS (1984)
LTD., VANCOUVER TAXI LTD.,
NORTH SHORE TAXI (1966) LTD., RICHMOND CABS LTD., BONNY'S TAXI LTD.,
BURNABY SELECT METROTOWN TAXI LTD., QUEEN CITY TAXI LTD.**

PETITIONERS

AND:

**PASSENGER TRANSPORTATION BOARD, UBER CANADA INC., LYFT
CANADA INC.**

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

Passenger Transportation Board
202-940 Blanshard Street
PO Box 9850 Stn Prov Govt
Victoria, B.C. V8W 9T5

Uber Canada Inc. ("**Uber**")
5300 - 66 Wellington Street West
Toronto, ON M5K 1E6

Lyft Canada Inc. ("**Lyft**")
2600-595 Burrard P.O Box 49314
Vancouver, BC V7X 1L3

2020 JAN 27 10:50 AM
S-200930
300.00

AND TO (Notice as required by s. 16 of the *Judicial Review Procedure Act*):

SYD'S TAXI (1984) LTD., MEADOW RIDGE TAXI LTD., ALOUETTE TRANSIT SYSTEMS LTD., BEL-AIR TAXI (1982) LIMITED, COQUITLAM TAXI (1977) LTD., PORT COQUITLAM TAXI LTD., DELTA SUNSHINE TAXI (1972) LTD., TSAWWASSEN TAXI LTD., GARDEN CITY CABS OF RICHMOND LTD., GUILDFORD CAB (1993) LTD., KIMBER CABS LTD., ROYAL CITY TAXI LTD., SUNSHINE CABS LIMITED, WHITE ROCK SOUTH SURREY TAXI LTD., SURDELL KENNEDY TAXI LTD., A.C. TAXI LTD., SWIFTSURE TAXI CO. LTD. (dba YELLOW CAB NANAIMO), OCEANSIDE TAXI LTD. (Formerly JATINDER SINGH GILL), COMOX TAXI LTD., DUNCAN TAXI LTD., and SUNSHINE COAST TAXI LTD. (hereinafter referred to as the "Additional Petitioners").

McLachlan Brown Anderson
10th Floor, 938 Howe Street
Vancouver, BC V6Z 1N9
Attention: William A. McLachlan

AND TO (Notice as required by s. 16 of the *Judicial Review Procedure Act*):

DEPUTY ATTORNEY GENERAL OF BRITISH COLUMBIA
Ministry of Justice
PO Box 9280 Stn Prov Govt
Victoria, B.C. V8W 9J7

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

- If you intend to respond to this petition, you or your lawyer must
- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
 - (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

- A response to petition must be filed and served on the petitioner,
- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
 - (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

Supreme Court of British Columbia
Vancouver Registry
800 Smithe Street
Vancouver, BC V6Z 2E1

(2) The ADDRESS FOR SERVICE of the Petitioners is:

Gall Legge Grant Zwack LLP
1000 – 1199 West Hastings Street
Vancouver, BC V6E 3T5
Attention: Peter A. Gall, Q.C.

Fax number for service (if any) of the Petitioner:

E-mail address for service (if any) of the Petitioner: pgall@glgzlaw.com

(3) The name and office address of the Petitioners YELLOW CAB COMPANY LTD., BLACK TOP CABS LTD., MACLURE'S CABS (1984) LTD., VANCOUVER TAXI LTD., NORTH SHORE TAXI (1966) LTD., RICHMOND CABS LTD., BONNY'S TAXI LTD., BURNABY SELECT METROTOWN TAXI LTD., and QUEEN CITY TAXI LTD. (the "Petitioners") is:

Peter A. Gall, Q.C.
Gall Legge Grant Zwack LLP
1000 – 1199 West Hastings Street
Vancouver, BC V6E 3T5

CLAIM OF THE PETITIONERS

Part 1: OVERVIEW

1. As the experience in other jurisdictions conclusively establishes, ride-hailing services, or Transportation Network Services (“TNS”) as they are referred to in British Columbia, have had an extremely harmful impact on participants in the taxi industry.
2. It was therefore of critical importance that the Passenger Transportation Board (the “**Board**”) fully consider the financial viability of the taxi industry in deciding the terms upon which TNSs would be allowed to operate in British Columbia.
3. Indeed, the *Passenger Transportation Act* expressly requires the Board to take into account the financial impacts on existing participants in the taxi industry prior to setting terms and conditions for any new participants.
4. As such, the appropriate terms and conditions for allowing TNS’s to participate in the passenger transportation industry in British Columbia cannot be lawfully determined. in accordance with the Board’s statutory mandate, without first considering the impact on the taxi industry of allowing TNSs to operate.
5. That is particularly the case where, as here, the Board was contemplating allowing TNSs to operate competing businesses on more favourable terms than the Board has set for taxis.
6. The cornerstone of the regulation of the taxi industry has always been the limit on the number of taxi licences that are granted for a particular geographic area.
7. These limits have been imposed to prevent the destructive competition that would occur if there were unlimited entry into this field – which would result in none of the participants being able to make a living.
8. Therefore, the Board has historically set the number of taxi licences based on the demand from the public for passenger transportation services. The Board carefully tailors the number of licenses granted based on the evidence about the public demand for passenger transportation services. That makes good practical and economic sense, and it is a matter of fundamental fairness to the participants in the taxi industry, many of whom have invested hundreds of thousands of dollars on the understanding that their interests and livelihoods would be protected.
9. The Board has also consistently set the rates to be charged to customers by taxis, again as a means of preventing destructive competition, but also to protect consumers and to provide participants in the taxi industry with a living wage and the means to properly maintain their vehicles.

10. There are also other regulations that have been imposed by the Board on taxis to ensure the safety of passengers – such as cameras in the vehicles – which again makes good common sense.
11. And taxi companies are required as a condition of their licences to provide a certain level of passenger transportation service to disabled passengers who require wheelchair transportation. Again, imposing this requirement on passenger transportation vehicles is clearly in the public interest.
12. The taxi industry has been built around these rules and regulations, which have been designed to protect both the welfare of the licence holders and the public.
13. With modern technology, passengers are now able to use a cellular telephone-based application (“**app**”) to obtain passenger transportation services. They no longer have to phone the dispatch system of the taxi company or hail a taxi on the street.
14. To meet the demand for app-based services, taxi companies now provide this service in addition to telephone dispatch and street service.
15. TNSs only provide app-based passenger transportation services. Unlike taxi companies, who purchase their own vehicles, TNSs engage persons with their own vehicles to provide the passenger transportation services through their apps, and pay the drivers a small percentage of the fees that they charge for each trip.
16. There is no doubt that TNSs are providing passenger transportation services in direct competition with the taxi companies. They are providing the exact same service, the only difference being that they do not have a telephone dispatch option and they do not pick up passengers on the street who have not requested the services through the app.
17. TNSs seek to capture the large and increasing segment of the market that prefers to order passenger transportation services on their smartphone, rather than by way of a phone call or trying to hail one on the street.
18. The business model of the international TSN companies, specifically Uber and Lyft, is to dominate the passenger transportation market by not having to comply with the rules and regulations that apply to taxis.
19. Most importantly for them, they do not want a limit on the number of vehicles they deploy through their apps, and they do not want restrictions on the prices they charge to customers, because the absence of such requirements gives them a significant competitive advantage over taxis, and allows the owners of the companies to maximize their profits.

20. Unlike taxi license holders whose revenues are tied to the successful operation of particular taxi cabs, Uber and Lyft are not invested in the success of individual vehicles as stand-alone businesses.
17. Rather, they generate their revenues from the volume of trips carried out by drivers. Therefore, having an oversupply of passenger transportation vehicles does not concern them, even if it means that individual drivers are exploited and cannot make a living wage.
18. Uber and Lyft also do not want to be subject to the other restrictions and rules that apply to taxis, such as cameras in the cars, or having to provide service to disabled passengers, known in the industry as wheelchair accessible taxicabs (“WATs”). For them, this is an unnecessary expense. They seek to maximize their revenues by keeping the governing rules and regulations to the bare minimum.
19. This is all being done in support of the TNS companies’ underlying business model and strategy, which is to flood the market at the outset in order to destroy the existing taxi industries, and then to dominate that market without additional competition, allowing them to take advantage of drivers and passengers.
20. In advance of considering applications from the TNSs on August 19, 2019, the Board published policy principled and guidelines which would enable TNSs to compete against taxi companies for passengers without having to comply with the same rules and requirements that have been and continue to be imposed by the Board on taxis (the “**Policy Decision**”).
21. There was no consideration given by the Board to the extremely harmful financial impact on the participants in the taxi industry of allowing Uber and Lyft to compete against taxis on much more favourable terms.
22. Specifically, the Board said in its policy guidelines that it would grant unlimited vehicles to the TNS companies. This would enable the TNSs to overwhelm the market with their passenger transportations vehicles – far in excess of what is necessary to ensure customers are receiving timely services – causing the very type of destructive competition the Board has consistently sought to prevent.
23. The Board’s policy guidelines also allowed TNSs to operate in broader geographic areas than taxis, which gives the TNSs an even greater ability to flood the geographic areas in which taxis operate with additional passenger transportation vehicles.
24. TNSs were also not required under the policy guidelines to have cameras in their cars, which enables them to save this expense that is imposed by the Board on taxis.

25. In addition, under the policy guidelines, TNSs are not required to provide service to disabled passengers in specially designed handicap vehicles, thereby allowing them to avoid this extra expense as well. This is again unlike taxicab owners, who are legally required to bear this expense and provide comparable service to disabled passengers.
26. The Board created other more favourable terms and conditions for TNS companies, including:
 - a. TNS companies do not have to bear the expense of operating dispatch systems and call centres, which taxi companies are required by the Board to do;
 - b. TNS companies do not have to identify the vehicles that will be providing the passenger transportation services for them, as taxis are required to do;
 - c. TNS companies do not have to honour taxi saving coupons that allow seniors and disabled persons to obtain a reduced fare for a ride, as taxi companies must do; And
 - d. TNSs are to be charged much lower fees for their licences than the taxi companies must pay.
27. Significantly, under the guidelines, TNS companies are entitled to set their own fees, which can differ significantly from the mandatory fees that the Board sets for taxi companies. This enables the TNS companies to undercut the required time and distance rates of taxis that have been established by the Board.
28. The policy guidelines also allowed TNS's to charge much higher rates than taxis during peak times, when demand is high for passenger transportation services. Thus, the TNSs have much greater flexibility in terms of fees than taxis, which gives them another significant competitive advantage over taxi companies.
29. There was no consideration given by the Board to the extremely harmful financial impact on the taxi industry of allowing Uber and Lyft to compete against taxis on much more favourable terms.
30. The only explanation provided by the Board for not requiring the TNSs to comply with the same rules as taxis is that these rules do not fit the business model of Uber and Lyft. That was the governing principle of the Board's guidelines – to support the business models of these international TNS companies.
31. The Board sought to achieve this objective regardless of how these business models have affected drivers, passengers, and the cities in which they operate – and most importantly in terms of the statutory criteria for the issuance of TNS

licences, regardless of their financial impact on existing passenger transportation service providers.

32. The Board said in the guidelines that it would monitor the performance of TNS and may reassess as this data becomes available, specifically regarding congestion, but did not provide any timeline or plan. This response is wholly inadequate and contrary to the Board's statutory mandate. The Board must consider whether the applications for TNS licences promote sound economic conditions on the passenger transportation business in British Columbia before issuing a licence, not afterwards.
33. Taking into account these considerations after a license is granted will be too late, because the economic harm will already have been suffered. The Board is statutorily obliged to prevent this from happening by imposing appropriate conditions in the initial issuance of a licence.
34. The issuance of these guidelines was itself an unreasonable and hence illegal exercise of statutory authority, for the following reasons:
 - (a) First, the Board has no authority to issue binding policy guidelines. It is statutorily required to consider the merits of each individual application on the basis of the specific evidence before the Board in light of certain statute criteria. By issuing guidelines in advance, the Board illegally fettered the exercise of its statutory mandate, because it was not then able to fairly and properly consider the merits of the individual TNSs applications on the basis of the statutory criteria. The Board tied its hands in advance of considering the applications for TNSs licences, contrary to the intention of the legislature.
 - (b) Second, even if the Board had the power to preclude a full consideration of each application on its merits by issuing policy guidelines in advance of the applications, , which is denied, the Board was required to establish such guidelines in a procedurally fair manner. In this context, that required enabling the taxi companies and any other stakeholders, such as those advocating on behalf of the disabled or in favour of public safety, to respond fully to the business models and practices of established TNS companies such as Uber and Lyft, including their harmful impact on the economic viability of the taxi industry. That did not happen.
 - (c) Third, in establishing these guidelines, the Board also exercised its statutory authority in a patently unreasonable manner – contrary to its statutory mandate – by not considering the harmful impact on the viability of the taxi industry that would be caused by issuing licences to TNSs on more favourable terms than are applied to taxis. The Board has previously held that these conditions are required for passenger transportation vehicles in order to protect the public interest in the provision of passenger

transportation services. The Board failed to provide an intelligible, transparent and reasonable basis for not applying these same conditions on to TNSs. It was clear that in its desire to have Uber and Lyft provide passenger transportation services in B.C. on terms set by Uber and Lyft, the Board was willing to ignore its statutory mandate to fairly properly and reasonably apply the statutory criteria for the issuance of Uber and Lyft's passenger transportation licences.

35. On September 4, 2019, the Petitioners filed a judicial review application, at the Vancouver Registry in proceeding S-199887, seeking to quash the Policy Decision prior to the Board's consideration of the TNS applications ("**Policy Petition**"). Their objective was to have the Board consider the applications on their own merits in accordance with the statutory criteria, unfettered by the guidelines established by the Board in advance of its adjudication of the applications.
36. The day before the Policy Petition was filed, September 3, 2019, Premier John Horgan wrote to Carolyn Bauer, spokesperson for the Vancouver Taxi Association, confirming the government's continued support of the taxi industry.
37. Premier Horgan acknowledged in this letter the "wide-spread concern ... that no firm cap has been set [on] the amount of TNS service that will be permitted in the province", and enclosed a letter of the same date from the Minister of Transportation, the Honourable Claire Trevena, to the Board reiterating this concern.
38. In his letter to Ms. Bauer, Premier Horgan confirmed that the Board would only approve applications for TNS licences after considering "sound economic conditions" in the passenger transportation business.
39. He referred to the Board Chair's confirmation that the Board would "monitor TNS performance and may review fleet sizes when data is available". He also emphasized that in its Policy Decision, the Board had committed to minimizing the negative impacts on taxis associated with approval of TNS licences.
40. In closing his letter, Premier Horgan assured Ms. Bauer that his government was "pursuing a very different direction from that proposed by the last government to support working families dependent on the taxi industry" and that "a solution to this problem can be found within the PTB framework".
41. In her September 3, 2019 letter to the Board, Minister Trevena similarly confirmed the government's continued commitment to minimizing the negative effects on the taxi industry caused by the introduction of TNSs.
42. She stated that it was the government's view that the Board's policy decisions should be reviewed "in a timely way to ensure the viability of the taxi industry

alongside TNS services” so that “the taxi industry does not experience serious economic dislocation before a supply or cap decision occurs.”

43. Less than a week later, the Board began publishing summaries of the applications it had received, saying that submissions must be received within 10 days.
44. The Petitioners wrote immediately to the Board objecting to this timeline and demanding that the Board disclose the actual application materials it had received, and to hold an oral hearing. The Petitioners said that because the Board had committed to ensuring the viability of Uber and Lyft’s business model as a principle in its Policy Decision, the Petitioners must have an opportunity to know and test whatever Uber and Lyft have to say about their business model.
45. A week later, the Board indicated that it had not adopted a policy that “pre-determines” the outcome of potential applications, or otherwise fettered its discretion.
46. The Board explicitly recognized that either of these actions would be illegal on its part, but did not formally withdraw its Policy Decision, which prejudged important aspects of the forthcoming applications for licenses.
47. The Board also stated that it would not make a decision on whether to hold an oral hearing until after the standard 10 day review period for applications had passed.
48. On the basis of these assurances by the Board, and the Government’s assurance that the economic conditions of the industry would be taken into account by the Board at the outset to ensure the harmful impacts to the taxi industry from the introduction of TNSs would be minimized, the Petitioners decided not to proceed immediately with their application for judicial review.
49. Instead, they decided to wait and see what the Board’s process would be and whether or not the Board’s problematic policy decision would be blindly adopted in its decisions on the TNS companies’ applications.
50. The Petitioners filed submissions before the Board which emphasized the destructive, competitive practices of Uber and Lyft in relation to the taxi industry.
51. They also filed evidence based on experiences in other jurisdictions about how devastating the economic impact on the taxi industry would be if Uber and Lyft were allowed to operate without the same conditions and requirements that apply to taxis, most importantly the restriction on the number of vehicles and the prices charged to customers.
52. The Petitioners also relied on Uber and Lyft’s own public securities filings, which set out in plain terms how their business model exploits drivers, skirts taxes, and

still results in staggering losses – at least until it is successful in driving out the existing taxi industries.

53. And the Petitioners provided the Board with two expert reports, one by Professor Austin Smyth, and one by Charles Komanoff, a professional policy analyst in New York.
54. Professor Smyth submitted an extensive discussion of the history of passenger transportation regulation, an analysis of the impacts of TNS on the passenger transportation industry, and a critique of the Board's apparent overall approach to regulatory reform. He highlighted the importance of basing significant regulatory reforms on evidence, and observed: "the evidence base on which the decision to implement the changes to regulatory arrangements for taxis and TNSs demonstrates significant limitations while the methodological base for the proposals lacks an ability to validate projections of future conditions."
55. In other words, Professor Smyth warned the Board against making premature and potentially harmful reforms to the passenger transportation industry, especially without any plan for how to measure or address those harms.
56. Mr. Komanoff provided a report focused on the impact of Uber and Lyft in New York City, where the Manhattan taxi industry has been devastated, traffic congestion is out of control, and city and state officials are only beginning to implement regulations to limit the number of vehicles and require Uber and Lyft to pay a minimum wage to drivers.
57. In its submissions, the Petitioners emphasized the gravity of the Board's TNS decision-making authority, and in particular, the potentially significant impacts of these decisions on the public interest and participants in the taxi industry. .
58. The Petitioners also urged full disclosure and oral hearings with the right of cross-examination, especially regarding the business model of Uber and Lyft, in order to ensure a fair process for those affected by the Board's decision, and to ensure that the Board had the information it needed to make a fully informed decision consistent with its statutory mandate.
59. Given all of these circumstances, the Board was required to make a sincere and serious inquiry into the business models of all TNS applicants, and whether the Uber and Lyft applications met the statutory criteria of public need, fitness, and promotion of sound economic conditions.
60. In essence, the Board had to ask itself – what will happen if we approve these applications, and if we approve them, what conditions should we attach to ensure the statutory criteria are satisfied?

61. Despite this, the Board refused to conduct an oral hearing and require meaningful disclosure to the stakeholders. This made it impossible for stakeholders other than Uber and Lyft to provide the Board with the complete body of evidence necessary for the Board to properly fulfil its important regulatory role in this context.
62. And then, in its decisions granting licences to Uber and Lyft, it is readily apparent that the Board simply applied its initial policy guidelines, and did not scrutinize the applications to ensure that the statutory criteria was met. Specifically, the Board failed to consider whether the granting of licences to Uber and Lyft, which did not contain the same conditions that are applied to taxis, would promote sound economic conditions in the passenger transportation business.
63. In paragraph 66 of its Lyft decision, under the heading “(c) Would the application, if granted, promote sound economic conditions in the passenger transportation business in British Columbia (s. 28(1)(c))?”, the Board refers to the September 3, 2019 letter it received from Minister Trevena, in which the Minister stated that:

...

I would like to acknowledge your insistence on the requirement to ensure any new services approved must “promote sound economic conditions in the transportation business”.

I appreciate that in making the policy decisions, you stated that while there are no limits on fleet size at this point, the board will monitor TNS performance data and may review fleet sizes when data is available. You also note that one of your policy principles is that negative impacts should be reviewed in a timely way to ensure the viability of the taxi industry alongside TNS services and that the taxi industry does not experience serious economic dislocation before a supply or cap decision occurs.

64. The Board then states in paragraph 67 of the Lyft decision that:

[67] This letter is therefore supportive of the concerns expressed about fleet size and the impact of TNS on taxis. It does not bind the Board, nor does it purport to do so. Had the Minister wanted to provide a general policy directive to the Board relating to the exercise of the Board’s powers and duties under s. 6(5) of the Act, she could have done so. Instead, as the letter makes clear, consideration of the concerns identified “should not be taken as a general policy directive”.

65. With respect, while the Board may think it can ignore the Minister’s letter, it cannot ignore its statutory obligation to consider whether the granting of licences to Uber and Lyft that do not impose the same conditions on them as are applied to taxis would promote sound economic conditions in the passenger transportation business in British Columbia, which it failed entirely to do.

66. Without inquiring at all into the impacts on taxis of not imposing the same conditions on Uber and Lyft that are imposed on taxis, the Board was completely dismissive of the financial consequences that this would inflict on participants in the taxi industry. This is shown, for instance, in paragraph 99 of its Lyft decision:

[99] We live in a market economy and competition is the norm in marketplaces. The prospect of taxis losing market share to TNS and experiencing declines in absolute levels of ridership can occur as a natural consequence of marketplace adjustments. While the Board is sympathetic to the prospect that taxi licence holders may experience a drop in their licence-share value, the Board has never sanctioned the market for such shares, nor does it have the authority to do so. Taxi licensees created the market for them, and they invested as investors or used them as collateral. As with any investments, there are associated risks and impacts. The introduction of ride-hailing has been a point of public discussion and consultation in B.C. for approximately seven years. As a consequence, there has been ample notice regarding the possible introduction of ride-hailing in this province.

67. This is a complete abdication of the Board's statutory obligations. And of course, in the passenger transportation industry in British Columbia, we have never in living memory had a free market economy with unrestricted competition. In the passenger transportation industry, the Government has placed regulations and restrictions on the marketplace, most crucially in the areas of who is allowed to compete, the size of the fleet that may be used to compete, and in the prohibition of competition between taxis on price. This was done in order to prevent exactly the type of destructive competition, and consequent harm to participants in the taxi industry and the public interest, that the Board's more recent decisions will ensure. The Board ought to have known these basic facts, because the Government has entrusted the Board to independently manage these regulations and restrictions.
68. The Board has improperly dismissed the impact on the taxi industry by saying, in effect, that the economic devastation the Board is inflicting on them was their own fault for creating a market for taxi shares, and that they should have seen it coming. But the industry had basically no notice that ride hailing would be introduced in a totally unregulated fashion – they fought tooth and nail to ensure that when ride hailing was introduced there would be a fair and level playing field, and received assurance that this would be the case.
69. The Board's complete failure to ensure that the public interest is protected, including by ensuring a fair and level playing field for existing passenger transportation service providers, is why this petition has become necessary.

70. In its licencing decisions, the Board repeated what it says in its policy guidelines that it will monitor the situation moving forward. However, it is telling that the future review it describes is not into the financial impact into the taxi industry of creating an uneven competitive playing field, but rather the collection of data on the activities of TNSs and taxis.
71. This again is a total repudiation of the statutory criteria that the Board is required to consider before, not after, it approves an application. The Board does not need any local data to justify regulating Uber and Lyft, their impact can be readily predicted with reference to experience elsewhere – including sharp reductions in taxi earnings, bankruptcies, foreclosures, and self-harm by taxi owners – as well as basic common sense. That is in addition to significant increases in congestion and greenhouse gas emissions caused by flooding the market with drivers.
72. Moreover, the very same public interest considerations that have justified placing restrictions and conditions upon existing taxi companies also justify placing the same restrictions on other passenger transportation vehicles and businesses.
73. It is clear, therefore, that in the issuance of its Lyft and Uber decisions, the Board simply applied its Policy Decision, basing its decision on what it considered best for Lyft and Uber, rather than what was best for the public interest in light of the Board’s statutory mandate. Most notably , the Board failed to consider whether the granting of licences to Uber and Lyft based on their business model would promote sound economic conditions in the passenger transportation business in British Columbia, as it was expressly required to do under the *Passenger Transportation Act*.
74. In other words, the Board has done nothing in response to the widespread concerns shared with it by Premier Horgan and by Minister Trevena. Instead, the Board has doubled down on ignoring its own statutory criteria and procedure for granting passenger transportation licences.
75. Thus, the Board’s granting of licences to Uber and Lyft must be quashed with a direction that the Board consider the economic impact on taxis of granting licences to Uber and Lyft on different terms.

Part 2: ORDERS SOUGHT

1. An order quashing the January 23, 2020 decisions granting Uber and Lyft TNS licences (the “**Decisions**);
2. In the alternative, an order directing the Board to re-hear, reconsider and/or vary the Decisions in accordance with the directions of this Honourable Court;

3. An Order that the Board shall file the entire record of the Decisions challenged by this Petition, pursuant to section 17 of the *Judicial Review Procedure Act*, RSBC 1996, c. 241 (the “*JRPA*”);
4. An interlocutory order staying the Uber and Lyft Decisions pending the outcome of this Petition;
5. Costs; and
6. Such further and other relief as this Honourable Court may deem just.

Part 3: FACTUAL BASIS

A. The Parties

1. The Petitioners are nine taxi companies based in the City of Vancouver and Metro Vancouver (collectively referred to as the “**Vancouver Taxi Companies**”). They operate both conventional taxicabs and WATs.
2. The Additional Petitioners are 21 taxi companies based throughout the Province of British Columbia.
3. The respondent Board is a tribunal established under the *Passenger Transportation Act*, R.S.B.C. 2004, c. 39, as amended (the “**Act**”).
4. The Vancouver Taxi Companies are variously licenced by the Board to originate trips and pick up passengers in the City of Vancouver, or in certain Metro Vancouver Municipalities, and at the Vancouver International Airport.
5. The respondent Uber Canada Inc. is the Canadian subsidiary of the international passenger transportation services provider Uber Technologies Inc. (“**Uber**”).
6. The respondent Lyft Canada Inc. is the Canadian subsidiary of Lyft Inc. (“**Lyft**”), which provides passenger transportation services in the United States and Canada.

B. Background

7. In addition to the facts recounted in the Overview above, which are adopted here as part of the factual basis for the petition, the following facts are relevant to the issues raised in this petition.
8. A commercial passenger vehicle is defined in the *Act* as a motor vehicle operated on a highway by or on behalf of a person who charges or collects compensation for the transportation of passenger in that motor vehicle.
9. A passenger directed vehicle (“**PDV**”) is defined in the *Act* as a commercial passenger vehicle, when the vehicle is operated to or from locations determined by or behalf of the passengers.

10. Transportation network services (“TNS”) are services respecting the connection of drivers of PDVs with passenger who hail and pay for the services through the use of an online platform.
11. A taxi is a PDV. A TNS vehicle is a PDV.
12. The operation of PDVs requires special authorization, either through a PDV authorization or a TNS authorization, which must be approved by Board.
13. The only difference between a PDV authorization and a TNS authorization is that a TNS authorization does not authorize PDVs to be hailed and paid for except through the use of the TNS, and a PDV authorization does not authorize the PDVs to be hailed and paid for through the use of a TNS.
14. The Board is authorized to make decisions on applications for licences that seek special authorization, and to set terms and conditions of those licences, including operating areas, maximum fleet size, rates, and other related matters. A licence can include both TNS authorization and PDV authorization.
15. Section 6(5) of the *Act* provides that the Minister may provide general policy directives to the Board with respect to the exercise of the board’s powers and duties.
16. With the exception of its power to make rules with respect to rates, the *Act* contains no provision authorizing the Board to make its own general policy directives or decisions in advance of an application.
17. Section 28(1) of the *Act* provides that the Board may approve an application for special authorization if it considers that:
 - a) there is a public need for the service the applicant proposes to provide;
 - b) the applicant is a fit and proper person to provide that service and is capable of providing that service, and
 - c) the application, if granted, would promote sound economic conditions in the passenger transportation business in British Columbia.
18. Each of the Petitioners holds a licence issued by the Board to operate PDVs, which licences contain the following terms and conditions:
 - a) Maximum fleet size, specifying the maximum number of taxis and WATs that may be operated at the same time;
 - b) Vehicle capacity, specifying the maximum number of passengers;

- c) Service priority, requiring persons with mobility aids who require a WAT to be treated as priority clients for the dispatch of WATs;
 - d) Minimum operating requirement, specifying that accessible taxi service is available to passengers throughout a 24 hour day in a reasonable manner and that WAT availability is, at a minimum, proportionate to conventional taxi availability;
 - e) Originating area, specifying the geographic boundaries within which passengers may be picked up;
 - f) Destination area, specifying the geographic boundaries within which passengers may be dropped off;
 - g) Taxi camera equipment, specifying that a digital taxi camera meeting the Board's specifications must be installed and operated in each taxi vehicle;
 - h) Taxi bill of rights, specifying that a taxi bill of rights document issued by the Ministry of Transportation must be affixed and displayed in each taxi;
 - i) Eco-friendly taxis, specifying that additional taxis must be operated as "eco-friendly" taxis as defined by the Board;
 - j) Meter requirement, specifying that vehicles must be equipped with a meter that calculates fares on a time and distance basis; and
 - k) Taxi identification code, specifying that each vehicle must have a unit taxi identification code affixed to the inside and outside of the vehicle.
19. Under its power to make rules with respect to rates, the Board has established Standard Rules for Taxicab Rates, which include:
- a) Licencees may only charge rates that are approved in writing by the Board; and
 - b) Licencees may charge a maximum of \$75 to passengers who soil or damage the interior of a vehicle.
20. The Board has also established a rule respecting Metro Vancouver Taxicab Rates, which specifies the rates approved for all taxicabs operating in Metro Vancouver.

C. The Policy Decision

21. In the lead up to the Policy Decision, the Board held consultations between July 9 and July 25, 2019.

22. Various interested parties attended the consultations, including taxis companies within the province, established TNS companies, and potential TNS companies.
23. The Board, however, did not meet with or consult any municipalities, or with public transit operators.
24. On July 12, 2019, the Board met with the Vancouver Taxi Companies.
25. And then on July 23, 2019, the Board met with Vancouver Airport Authority and the Vancouver Port Authority.
26. Finally, the Board met with Uber on July 23, 2019, and with Lyft on July 24, 2019.
27. The consultations were based on the following principles:
 - The TNS business model is provided with the opportunity to be viable and meet public need for the service.
 - Negative impacts on taxi stakeholders associated with the introduction of TNSs should be minimized where possible.
 - Policies will be based on defensible research.
 - Meaningful consultation with those directly impacted will occur.
 - Certainty and transparency will be provided in the resulting policies on sound economic conditions.
 - The Board must move to better use of origin / destination and performance indicator data in making decisions and monitoring the impacts of decisions as soon as this data is available.
28. After the consultations, the Board issued the following decision on August 19, 2019:

Operational Policy:

Introduction of Transportation Network Services, 2019

Purpose:

To set the policies to guide decision making on Transportation Network Services (TNS) in British Columbia with respect to operating areas, fleet sizes and rates.

Legislation:

The *Passenger Transportation Amendment Act* and Regulation (amendments) provide the legislative basis for introducing ride-hailing, called Transportation Network Services (TNSs), to the province in September 2019. The legislation provides sole authority to the Passenger Transportation Board to set operating areas, fleet sizes and rates. It also gives the Board the authority to set data requirements that TNS companies must provide to the Registrar as a term and condition of a TNS licence.

The Passenger Transportation Act (PTA) states that the Board may approve an application after the Board considers whether:

- the applicant is a fit and proper person and capable of providing the service;
- there is a public need for the service; and
- the application would promote sound economic conditions in the passenger transportation business in the province.

Context:

Various reports by, or on behalf of, government indicate a strong desire on the part of government and the public for the introduction of Transportation Network Services (ridehailing). These reports include the following:

- Select Standing Committee on Crown Corporations (SSCCC) inquiry into ride hailing concluded there was a need for ride-hailing within a provincial regulatory framework (2018);
- A report entitled Modernizing Taxi regulation concluded there was a shortage of taxis (2018);
- Debates on and the passage of the Passenger Transportation Amendment Act (2018);
- A second SSCCC inquiry into TNSs (2019).

The Passenger Transportation Branch of the Ministry of Transportation and Infrastructure will start to accept TNS applications on September 3, 2019 and will send these applications to the Board shortly thereafter.

In July 2019, the Board consulted with the taxi industry, the TNS industry, the Vancouver Airport Authority and the Vancouver Port Authority on TNS companies' operating areas, fleet sizes and rates. This policy is based on background research conducted by the Board and published on its website, the July consultation report, information available to the public, and Board's discussion of the issues and decisions.

While the Board has conducted research and reviewed experiences in other jurisdictions, no data is available on the performance of TNSs in British Columbia. We will start collecting this data once TNS start operating.

When making decisions on applications, the Board will refer to this policy. Each assessment and decision on a TNS application will be based on the evidence before the Board, including the application materials, submissions from others on the application, and the applicant's response.

Policy Principles:

1. The TNS business model is provided with the opportunity to be viable and meet public need for the service
2. Negative impacts on taxi stakeholders associated with the introduction of TNSs should be minimized where possible
3. Policies will be based on defensible research
4. Meaningful consultation with those directly impacted will occur
5. Certainty and transparency will be provided in the resulting policies on sound economic conditions
6. The Board must move to better use of origin / destination and performance indicator data in making decisions and monitoring the impacts of decisions as soon as this data is available.

Policy on Operating Areas:

1. When applying for a TNS licence, an application must be made for a specified operating area. If a TNS company wishes to operate in more than one area, it must provide required information as set out in the application package for each operating area.
2. The Board establishes the following operating areas for TNSs:

<p>Region 1 (Lower Mainland, Whistler)</p> <ul style="list-style-type: none"> • Metro Vancouver • Fraser Valley • Squamish-Lillooet 	<p>Region 2 (Capital Regional District)</p> <ul style="list-style-type: none"> • Capital Regional District 	<p>Region 3 (Vancouver Island, excluding CRD)</p> <ul style="list-style-type: none"> • Cowichan Valley • Nanaimo • Comox Valley • Alberni Clayoquot • Strathcona • Mt. Waddington • Qathet (Powell River)
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<p>Region 4 (Okanagan – Kootenay Boundary-Cariboo)</p> <ul style="list-style-type: none"> • Okanagan-Similkameen • Central Okanagan • North Okanagan • Kootenay Boundary • Shuswap Cariboo • Thompson-Nicola • Columbia 	<p>Region 5 (BC North Central & other regions of BC)</p> <ul style="list-style-type: none"> • Fraser-Fort George • Bulkey Nechako • Kitimat-Stikine • Peace River • Northern Rockies • North Coast • Island Trust • Sunshine Coast 	
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3. TNSs operating in the City of Vancouver (in Region 1 above) must geo-fence off the areas listed below in (a) to (c) on cruise ship days to prevent drivers from picking up passengers:

- (a) Canada Place Way between Howe Street and Burrard Street;
- (b) Howe Street between Canada Place Way and Cordova Street; and
- (c) Burrard Street between Canada Place Way and Cordova Street.

The Board will post a link to the city's cruise ship schedule, when available, in March or April of any year.

Policy on Fleet Size:

- 4. There are no initial limits on TNS fleet size.
- 5. The Board will monitor TNS performance data and may review fleet sizes when data is available.

Policy on TNS Rates:

- 6. Minimum rates for TNSs will be based on taxi flag rates in an operating area, as determined by the Board.
- 7. The use of coupons or discounts by TNSs to lower rates below the minimum rate is prohibited.

Policy on Data Requirements from TNS Companies:

- 8. Terms and conditions of licence will require TNS companies to provide data to the Registrar for the use of the Board pursuant to section 28(5) of the Passenger Transportation Act.

9. The Board's data requirements for TNS companies are outlined in the Data Requirements sheet on the Board's website.

Policy on Driver Income Information

10. Terms and conditions of licences will require TNSs to provide quarterly reporting of drivers' incomes.

29. In announcing the Decision, the Chair of the Board said:

[...]

- Last year government introduced the Passenger Transportation Amendment Act and in July of this year announced regulations that will bring this into effect. The Act gives the Board the sole authority to set fleet sizes, rates and operating areas for taxis and TNSs.
- Parts of the PTA legislation will come into effect on September 3, 2019, when we will accept TNS applications. The remaining parts will come into effect September 16.
- This doesn't mean TNS will be operating right after September 3rd. The Board has to meet legislative requirements to process, review and decide on applications and issue licences. These include requirements for publishing the application, allowing time for respondents to provide submissions, and providing time for the applicant to respond to these submissions. Then the application and all materials go to the Board for review and decision.
- It is expected that Transportation Network Services will be available in some parts of the province later this year.

[...]

- At this point, there are no limits on fleet size.
 - o It takes years for TNSs to ramp up. This will especially be the case with Class 4 drivers licence requirement August 19, 2019 Speaking Notes PT Board
 - o New legislation gives the Board the authority to collect data from TNSs and taxis
 - o As soon as a Transportation Network Service starts operating, we will require collection of data that has been set out by the Board and is being published today
 - o Board s going to make evidence-based decisions.
- The Passenger Transportation Board will be monitoring TNSs performance data, and as data becomes available fleet size may be reassessed. A cap will depend on issues such as congestion.

[...]

- The Passenger Transportation Board will set the minimum rate that a Transportation Network Service may charge based on taxi flag rates in the operating area. In the Metro Vancouver area, this may be in the range of \$3.50 to \$3.75 as a base rate
- Transportation Network Services may not use coupons or discounts to charge below this minimum rate.
- There will be no caps on TNS rates. Allowing TNSs to increase price expands supply of drivers to meet passenger demand at peak times. Both TNSs passengers and drivers will be provided with an estimate of the cost of the trip or an up-front price that will be charged before they accept a ride. If a passenger thinks the fare is too high, they can take a taxi or another transportation alternative.

[...]

Impact on Taxis:

- The taxi industry will remain an important part of the transportation network in the province.
 - Taxi companies may apply for a Transportation Network Service (TNS) licence. If licensed as a Transportation Network Service, when operating as a TNS, the taxi is subject to the TNS rules including the flexibility to operate within defined TNS boundaries.
 - Taxis must have cameras in their vehicles and can be street-hailed or dispatched. They provide services that members of the public may prefer.
 - Many taxi services also offer wheelchair accessible services.
30. No information was provided by the Board to the taxi industry about the business model that Uber and Lyft apparently told the Board it needed to have supported in order to be viable in the Province.
 31. Thus, the taxi industry was not provided an opportunity to address and provide submissions on that business model, or the submissions of Uber and Lyft, in the Board's consultation process.
 32. All the taxi industry could do was present some general concerns about the impact of Uber and Lyft on the taxi industry and the public interest, which was prior to the Board's meeting with Uber and Lyft. This procedure was not sufficient to enable the Board to properly exercise its statutory mandate to scrutinize TNS applications and to determine the rules and regulations that should apply to a TNS applicant, in accordance with the statutory criteria.

D. The Uber and Lyft Decisions

33. On August 30, 2019, Peter Gall, Q.C., counsel for the Petitioners, wrote to the Board about the Petitioners concerns regarding the Policy Decision.

34. Mr. Gall explained the necessity of providing the Petitioners with a meaningful opportunity to contest any TNS applications, including the need to hold an oral hearing and provide them with full disclosure.
35. On September 3, 2019, Premier Horgan wrote to Ms. Bauer confirming the Government continued support of the taxi industry, and enclosing Minister Trevena's letter to the Board of the same date.
36. Both Premier Horgan and Minister Trevena confirmed the government's continued commitment to minimizing the negative effects on the taxi industry with the introduction of TNSs.
37. On September 4, 2019, the original petition in this proceeding was filed.
38. On September 9, 2019, Mr. Gall again wrote to the Board. In his letter, Mr. Gall expressed concern with the speed at which the TNS applications had been delivered to the Board. He again urged the Board to hold an oral hearing and provide the Petitioners with complete disclosure.
39. On September 9, 2019, the Board published a notification that it has received applications from Uber and Lyft, with a deadline for submissions from stakeholders and the public of September 19, 2019. These public notifications contained summaries of the applications, but did not contain any meaningful information about what was actually provided to the Board by Uber and Lyft in their applications.
40. Mr. Gall wrote to the Board once again the next day, on September 10, 2019, objecting to the 10 day period for making submissions. He repeated his request for an oral hearing and full disclosure regarding the Uber and Lyft applications.
41. On September 16, 2019, Catharine Read, Chair of the Board, responded to Mr. Gall's letters dated August 30, September 9 and 10, 2019.
42. Ms. Read advised that the Board would make a decision on whether to hold an oral hearing after the 10 day review period, and extended the review period by 5 days to September 24, 2019.
43. She also stated that "the Board has not adopted a policy that 'pre-determines' the outcome of potential TNS applications or otherwise fettered its discretion. The Board recognizes that applications cannot be pre-determined by a policy."
44. On September 23, 2019, William A. McLachlan, counsel for the Additional Petitioners, filed submissions with the Board on behalf of the Additional Petitioners.
45. On September 24, 2019, Mr. Gall filed a submission with the Board on behalf of the Vancouver Taxi Companies regarding the applications of Uber and Lyft (the

“**VTA Submission**”), again urging the Board to make full disclosure of the application materials and hold an oral hearing.

46. The VTA Submission contained expert evidence about the negative impact of Uber and Lyft in New York City, and referenced information publically available at the time about the business model of Uber and Lyft, and their negative impacts in the other jurisdictions where they operate.
47. On September 24, 2019, the Board filed its response to the Policy Petition.
48. On October 30, 2019, the Board issued a decision not to hold an oral hearing for any TNS applications, for the reason that it is not required to do so.
49. The Board adopted a process where the Petitioners would be provided with redacted information about the TNS applications, to which they would have 14 calendar days to respond.
50. On November 5, 2019, the Board disclosed a redacted copy of Uber application materials and Uber’s response to the Petitioners’ submissions which totaled over 3,000 pages, and the Petitioners had 14 days to review and respond.
51. On November 12, 2019, Mr. Gall wrote to the Board objecting to its new process and continued to urge the Board to conduct an oral hearing.
52. Mr. Gall also objected to the redactions that had been made to Uber’s disclosure documents, which redacted any and all information about Uber’s business model and plans for British Columbia.
53. On November 14, 2019, the Board disclosed a redacted copy of Lyft’s application materials and Lyft’s response to the Petitioners’ submission, which totaled
54. Also, on November 14, 2019, Ms. Read responded to Mr. Gall’s letter of November 12. She dismissed the Petitioners’ objections to the Board’s process, and refused to disclose any further information about the TNS applications.
55. On November 19, 2019, Mr. Gall filed further submissions with the Board noting that it was not practically possible for the Petitioners to respond in a detailed manner to thousands of pages of disclosure provided by the Board regarding the Uber and Lyft applications within the time period provided.
56. On November 28, 2019, Mr. Gall wrote to the Board advising it of a complaint filed against Uber and Lyft with the BC Labour Relations Board by the United Food and Commercial Workers’ Union regarding their potentially unlawful labour practices.
57. In his letter Mr. Gall requested confirmation that the Board would take steps to ensure it does not issue licences to applicants that openly impose illegal conditions on their drivers.

58. On December 6, 2019, Ms. Read responded to Mr. Gall's letter of November 28. She dismissed the Petitioners' concerns about the Labour Relations Board complaint regarding Uber and Lyft's alleged unfair and exploitative practices with its drivers.
59. Lyft's publically announced its pricing structure for Metro Vancouver on December 13, 2019. Lyft's pricing structure was not a part of the Board's disclosure.
60. Mr. Gall wrote to the Board on the same day expressing the Petitioners' concerns that if Lyft is granted a TNS licence without pricing regulations, it will significantly undercut the established rates for taxis, and therefore result in the destruction of the economic viability of the taxi industry.
61. Mr. Gall submitted that Lyft's proposed pricing structure was obviously predatory as compared to the Board's fixed taxi rates. As a result, he urged the Board to attach fair and reasonable pricing conditions to every TNS licence that it intends to grant.
62. On December 16, 2019, the Board approved its first TNS application for Green Coast Ventures Inc., adopting, at paras. 120 and 121 of its decision, the fleet size and rates set out in the Policy Decision.
63. The Board did not limit these terms to the specific application before it. The minimum rate for TNS, regardless of trip length or duration, is \$3.35.
64. On December 19, 2019, the Policy Petition was amended to add the Additional Petitioners.
65. On December 29, 2019, Mr. Gall wrote to the Board to bring relevant information to its attention. He attached a news article which explained that the business model of Uber and Lyft is based on destroying competition by flooding the market with cars and charging very low initial prices to customers. Mr. Gall reminded the Board that it is required to prevent this destructive competition in the passenger transportation industry in British Columbia.
66. Mr. Gall wrote to the Board again on January 13, 2020. He brought a news article to its attention about a judgement in Colombia ordering Uber to cease ride-hailing operations due to unfair competition.
67. Despite this information – and the expert evidence, experiences of other jurisdictions, and submissions made by the Petitioners – the Board approved the Uber and Lyft applications on January 23, 2020.
68. In its decisions, the Board adopted the fleet sizes and rates set out in the Policy decision.

69. On January 23, 2020, Mr. Gall wrote to Deborah Lovett, Q.C., counsel to the Board, requesting that the Board stay the implementation of the Uber and Lyft Decisions until the Petitioners could seek a judicial stay.
70. On January 24, 2020, Ms. Lovett wrote Mr. Gall, on behalf of the Board, taking the position that the Board does not have jurisdiction to issue a stay.

E. The Taxi Industry

71. The passenger transportation industry in Metro Vancouver has been regulated for many years, with restrictions on the number of taxis authorized to operate, and the prices that operators are permitted to charge. This has been done to promote the public interest, including by preventing destructive competition in the taxi industry.
72. Most taxi companies in Metro Vancouver issue shares that are purchased by individual taxi owner-operators and assign the rights to operate a taxi under the company's brand to that individual.
73. Most of the shares in the Vancouver Taxi Companies are purchased using financing, with the taxi company share as collateral.
74. Many taxi company shareholders have borrowed against the value of their taxi company share in order to purchase a residence.
75. Uber and Lyft have been operating for a few days in Metro Vancouver without any conditions on their fleet sizes and pricing. And, they have been operating with rates significantly less than those the Vancouver Taxi Companies are required by the Board to charge.
76. As a result, the shares in Vancouver Taxi Companies will have to be offered for sale at significant discounts. If shares are sold at discounted prices, shareholders who purchased at higher prices will suffer significant losses.
77. The more that Uber and Lyft are able to take market share away from the taxi companies, including by exploiting the favourable conditions imposed by the Board, the greater will be the impact on the value of the taxi shares as well as the taxi industry as a whole.
78. There are more than \$550 Million in outstanding loans in relation to shares of the Vancouver Taxi Companies.
79. Further, the Petitioners' economic situation is immediately and significantly harmed by Uber and Lyft being able to compete against them in the passenger transportation industry without any regulation of the size of their fleets or the prices charged to customers.

80. There have already been reports of reduced taxi business, especially at YVR airport and at hotel taxi stands, with taxis waiting longer than usual for customers, while customers wait longer to pay lower prices for Uber and Lyft.
81. While the Board has been receiving data from the taxi companies since September 2019 about trip durations, distances and fares, it has not asked for, or received, data on the financial impact or the soundness of the economic conditions imposed on the taxi industry with the issuance of TNS licences to Uber and Lyft.

Part 4: LEGAL BASIS

A. Fettering of Discretion

1. By adopting the policy guidelines, the Board fettered its discretion to consider the TNS applications of Uber and Lyft on their individual merits in accordance with the statutory criteria. This fettering of discretion necessarily renders the Board's decisions unreasonable and unlawful.

B. Procedural Unfairness

2. The Board acted in a procedurally unfair manner in adopting its policy guidelines and in its consideration of the applications of Uber and Lyft by failing to provide interested parties with any meaningful information relating to these applications and by failing to provide a meaningful opportunity to interested parties to challenge the applications in light of the statutory criteria.

C. The Decisions to Grant Uber and Lyft TNS Licences are Patently Unreasonable

3. Section 58 of the *Administrative Tribunal Act*, SBC 2004, c.45 (the "*ATA*"), applies to the Board's Decisions. Accordingly, the standard of review is patent unreasonableness with respect to the substantive conclusions of the Board.
4. The difference between unreasonableness and patent unreasonableness is neither qualitative nor quantitative, but is merely an expression of the immediacy or obviousness of the error.

The College of Physicians and Surgeons of British Columbia v The Health Professions Review Board, 2019 BCSC 539, at para 43 citing *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 57.

5. As defined in the *ATA*, a discretionary decision is patently unreasonable if the discretion:
 - (a) is exercised arbitrarily or in bad faith.
 - (b) is exercised for an improper purpose;

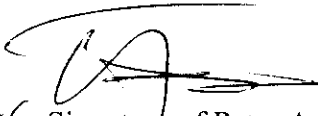
- (c) is based entirely or predominantly on irrelevant factors, or
 - (d) fails to take statutory requirements into account.
6. In the situation at hand, the impugned decisions were arbitrary, exercised for an improper purpose or based on irrelevant factors, and failed to take into account statutory requirements.
 7. They were arbitrary, and exercised for an improper purpose or based on irrelevant factors, because they were based entirely on what the Board considered necessary to support the business model of Uber and Lyft, which is an arbitrary, improper, and irrelevant consideration in the context of the *Act* and the Board's statutory mandate under the *Act*.
 8. And in failing to take into account the impact on the financial viability of taxis, the Board failed entirely to take statutory conditions into account, which required the Board to consider the applications in light of the specific criteria that they must promote sound economic conditions in the passenger transportation business in British Columbia.

Part 5: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Carolyn Bauer, made January 26, 2020.
2. Such other and further materials that formed part of the record before the Board that are not in the current possession of the petitioners.
3. Such other and further materials that may be provided to the respondent prior to the hearing of the Petition.

The Petitioners estimate that the hearing of the Petition will take four days.

Date: January 27, 2020


 for Signature of Peter A. Gall, Q.C.

petitioner lawyer for
 the Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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.....
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.....
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Date:[dd/mmm/yyyy].....

Signature of Judge Master