

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**DIANE ROBINSON operating as North Star Taxi P.O.  
Box 1144, Hay River, N.W.T.** (hereinafter called the  
"appellant")

- and -

**THE MUNICIPAL CORPORATION OF THE TOWN OF  
HAY RIVER** (hereinafter called the "respondent")

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Appeal from convictions under a municipal taxi by-law. Appeal allowed, convictions set aside.

Appeal heard: October 25, 1996

Reasons filed: January 3, 1997

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REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the appellant: Andrew E. Fox

Counsel for the respondent: Steven L. Cooper

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### **REASONS FOR JUDGMENT**

1           This is a summary conviction appeal arising from three convictions of the  
appellant for contravening the taxi by-law of the Town of Hay River. At issue is the  
interpretation of the word "operator" used in the section of the by-law in question.

2           The appellant is the owner of a taxi business known as North Star Taxi. On  
the three dates in question - July 25, 1995, July 31, 1995 and August 8, 1995 - North  
Star taxicabs were charging rates in excess of those permitted in the town's by-law. The  
appellant herself was not driving the taxicabs on those dates. Other persons were driving  
the vehicles in question. She is, however, the controlling mind of the business. She was  
charged in each of the three Informations with an offence contrary to s.24(i) of the by-  
law. That subsection reads as follows:

s.24(i). The rates charged by livery or taxi-cab operators, drivers  
or chauffeurs shall not be greater than those set out in Schedule 3.

3           Following a trial, the appellant was convicted of each charge. She appeals.  
In her main ground of appeal she submits that "operator" should be interpreted as being

analogous with "driver" and "chauffeur", and that accordingly she was wrongly convicted.

4           In response, the town argues that "operate" should be given a wider meaning, i.e. operate the taxi business, and that the convictions should stand.

5           An examination of the entire by-law is necessary.

6           The town council is authorized by territorial legislation to license taxis, regulate the operation of taxis, and establish maximum fares to be charged by taxi operators. The respondent town has done so by enacting the subject by-law *Motor Livery By-law* (By-law #820).

7           The by-law, though not the product of perfect draftsmanship, is fairly straightforward. It contemplates that an individual or company will apply for a license to operate a bus service or a motor livery (taxicab) service within the town. The applicant is required to make application in the prescribed form (s.8), and to provide details of the vehicles to be licensed (s.9), the proposed fares (s.10), insurance coverage (s.11) and drivers (and operators) to be employed (s.15).

8           If town council decides that the application has merit, a license is issued to the applicant. Throughout the by-law, the person to whom that license is issued is referred to as the "holder of a license" (s.11, s.20, s.21, s.22, s.23, s.24(ii) and (iv), s.30, s.32); as the "owner of the livery service" (s.14, s.15, s.17, s.18, s.19, s.27, s.28); as the "operator of a livery" (s.16) and as the "licensee" (s.20, s.25).

9                   The by-law imposes on the license holder certain requirements, e.g. 24-hour service, dispatcher service, posting a schedule of fares, maintenance of insurance coverage, etc. The license holder is prohibited from certain activities, e.g. employing uncertified drivers (s.19), charging fares in excess of those allowed by the by-law (s.32). The license holder may have his/her license suspended or cancelled for cause (s.11, s.22, s.28, s.32).

10                   The appellant is (or represents) a license holder under the by-law. All of the aforementioned provisions apply to her. At issue in this appeal is whether, in addition, s.24(i) applies to her.

11                   What is the meaning of the word "operator" in s.24(i)?

12                   In the by-law, the root word "operate" is used in two different senses - to operate a vehicle, and to operate a livery service. As noted above, an applicant for a license to operate a taxicab service is required, *inter alia*, to list all drivers and operators (see s.15 and Form D) to be employed by the applicant.

13                   In the context of the entire by-law, it is clear, in s.24(i), the word "operator" has a meaning analogous with the accompanying words "driver" and "chauffeur", i.e. the person actually working the mechanism of the vehicle. *R. v. Morton* (1970), 75 W.W.R. 335 (B.C. Prov. Ct.); *Cooperative Fire and Casualty Company v. London & Edinburgh Insurance Company Limited*, [1971] 1 W.W.R. 130 (Man. Q.B.); *O'Reilly v. Can. Acc. & F. Ass'ce. Co.*, [1929] 2 D.L.R. 70 (Ont. S.C., App. Div.); *R. v. Twoyoungman*, (1979) 48

C.C.C. (2d) 550 (Alta. C.A.).

14 To attribute such a meaning via the *noscitur a sociis* doctrine is consonant with the general scheme of the by-law and, more importantly, it is not inconsistent with the clear intentions of town council in enacting the by-law.

15 The prohibition in s.24(i) is targeted at those persons who are personally in charge and control of the taxicab at the time the excess fare is charged. Any contravention of that subsection renders such persons liable to summary conviction punishment by virtue of s.33 of the by-law:

s.33. Every person who contravenes any of the provisions of this by-law is guilty of an offence and liable upon summary conviction to a fine not exceeding \$500.00 or imprisonment for a period not exceeding 60 days, or to both such fine and imprisonment.

16 Thus, the narrower meaning of "operator" in s.24(i), advanced by the appellant, is the correct one.

17 This interpretation is confirmed by reference to s.32 of the by-law. It is this section of the by-law that is targetted at the owner of the taxi business, or the license holder, who is implicated in the charging of excess fares:

s.32. If the holder of a license to operate a livery service fails to comply with the Tariff of Fares as set out in Schedule 3, or any of the provisions of the by-law, the Council may suspend the license for a period of not more than thirty days, or cancel his license.

Thus, there are possibly serious consequences for the owner of the taxi business. (Indeed,

in a related case in this Court, s.32 was invoked by the respondent town against the license holder - see *North Star Taxi Ltd. v. Town of Hay River*, [1996] N.W.T.J. No. 4.

18 I find, therefore, that there is merit in the main ground of appeal. I need not consider the other grounds advanced by the appellant.

19 The appeal is allowed and the convictions are set aside.

J.E. Richard  
J.S.C.

Yellowknife, Northwest Territories  
Dated this 3rd day of January, 1997.

Counsel for the appellant: Andrew E. Fox

Counsel for the respondent: Steven L. Cooper