

Date: June 23 1997  
Docket: CV 06974

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

THE MUNICIPAL CORPORATION OF THE TOWN OF HAY RIVER

Applicant

- and -

DIANE ROBINSON, HARVEY WERNER and SYLVIA ARNOLD

Respondents

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Application for injunctive relief based on alleged contravention of a by-law. Denied.

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**REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V. A. SCHULER**

Heard at Yellowknife, Northwest Territories  
on April 23, 1997.

Reasons filed: June 23, 1997

Counsel for the Applicant: Charles McGee

Counsel for the Respondents  
Harvey Werner & Sylvia Arnold: Earl D. Johnson, QC

No one appearing for the Respondent Diane Robinson

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**REASONS FOR JUDGMENT**

[1] This is an application by the Town of Hay River (the “Town”) for an Order declaring that certain activities of the Respondents constitute the operation of a taxi or a taxi brokerage business and granting an injunction against the Respondents prohibiting them from carrying on the said and related activities.

[2] At the commencement of argument, counsel for the Town outlined problems with service of notice of this application on the Respondent Robinson. Counsel for the Respondents Werner and Arnold indicated that he had spoken to Robinson and that she was aware of the application. I ordered that service of the application on counsel for the Respondents Werner and Arnold was good and sufficient service on Robinson as well.

[3] There is no dispute as to the basic facts. The Respondents have all either been involved in the taxi business in Hay River or have attempted to become involved in it.

[4] The Respondents are offering rides in their vehicles to members of the public. The passenger is asked to consider making a donation to a fund to be used to litigate against the Town in a proposed challenge to the by-law which regulates taxis.

[5] In his affidavit, the Respondent Werner states that any donation is voluntary and need not bear any relation to the distance travelled or the normal taxi fare for that distance. Advertisements have been posted around Hay River by, or at the direction of, the Respondents, providing a telephone number for those who need a ride and stating that donations will be accepted. Other advertisements state what the average donations are to various destinations. According to Werner, this information has been provided in response to inquiries from passengers as to how much they should donate.

[6] Werner deposes that the average donations are about half of the normal taxi fare. He says also that approximately twenty percent of the passengers pay nothing, while some pay significantly more than what the regular taxi fare would have been.

[7] Werner states that no profit is realized by operating in this manner. He and the other drivers are not paid for their services. The money collected is used to defray the expense of the vehicles (exclusive of compensation of the drivers) but anything beyond that is placed in a solicitor's trust account for purposes of the litigation to challenge the by-law.

[8] There is evidence in the Town's by-law officer's affidavit of use by the Respondents of a dispatch system via radio transmission. Werner denies that there is any formal dispatch system and denies the frequency of the radio transmissions. As there was no cross-examination on the affidavits, I am not in a position to assess credibility and I therefore disregard the disputed matters. In any event, I do not think that use of a dispatch system assists me in the interpretation of the relevant by-law.

[9] The issue is whether the activities of the Respondents contravene the Town's by-law no. 1599, the Taxi Licence By-Law, which provides for the supervision, licensing and regulation of taxis. I have decided that they do not.

[10] Section 3 of the by-law provides as follows:

No person shall operate a vehicle for the purpose of conveying passengers for hire or profit within the Town of Hay River unless there is a valid and subsisting Taxi Licence for such vehicle, issued pursuant to this By-Law.

[11] The definition of "taxi" in s.2(j) of the by-law repeats the reference to "for hire or profit", as follows:

“Taxi” means a vehicle that is used to carry for hire or profit, not more than twelve (12) passengers, excluding the Driver thereof, but does not include a bus or truck;

[12] Additionally, s.4 of the by-law provides that no person shall operate a taxi brokerage business without a valid and subsisting taxi brokerage licence and s.13 provides that no person shall operate a taxi without a valid chauffeur’s permit.

[13] None of the Respondents hold a taxi brokerage licence, taxi licence or chauffeur’s permit.

[14] The by-law does not contain a definition of the term “for hire or profit”.

[15] Counsel provided a number of dictionary definitions of the terms “hire” and “profit”. From reviewing those, it appears to me that the term “hire” usually involves payment or compensation that is contracted to be made for the use of something or for personal service.

[16] The case authorities bear this out. In *Bonham v Zurich General Accident & Liability Insurance Company Limited*, [1945] 1 K.B. 292 (C.A.), the Court considered the meaning of the words “hire or reward” in connection with the carriage of passengers. The driver in that case accepted, but did not request, the equivalent rail fare from fellow employees he drove to work. Two of the three Judges on appeal held that the passengers were carried for reward. All three Judges considered that the word “hire” imported an obligation to pay, which was not present in that case.

[17] In this case, passengers who accept or request a ride from the Respondents have no obligation to pay anything. They are asked to make a donation to a cause, albeit a cause perhaps dear to the hearts of the Respondents alone. The Respondents do not demand any particular sum of money and have no recourse should the passenger decline to make a donation.

[18] The situation is quite different, in my view, from the case where a driver makes an arrangement to carry passengers for the same payment they would otherwise have to pay a taxi. That was the situation in *Semon v Canada West Insurance Company* (1951), 3 W.W.R. (N.S.) 45 (Alta. S.C.). The Court found that the driver was carrying passengers for hire, relying on the following definition of “hire” from the New Century Dictionary:

“The price or compensation to be paid or contracted to be paid for the temporary use of something or for personal services or labour (as, money paid as boat-hire or carriage-hire; ‘The labourer is worthy of his hire’, Luke, x.7); hence, reward or compensation in general.”

[19] The Respondents do not get any compensation for their labour or the use of the vehicles; they may, or may not, get a donation to the litigation fund.

[20] *Cocks v Maynard* (1893), 70 L.T. 403, was a case where the court had to consider whether two omnibuses were “plying for hire” within the terms of the relevant statute. The omnibuses operated exactly as any regular bus would except that a sign affixed to them said that they were placed at the disposal of the public free of charge and that any voluntary contributions toward their maintenance would be welcomed. Passengers generally paid the conductors in the collection box provided, but some paid nothing.

[21] The Court in *Cocks* found that the owner of the omnibuses was simply attempting to evade the statute and that the omnibuses were plying for hire. There is, however, no indication in that case that the owner was doing anything with the money he received but dealing with it in the normal course of business - presumably paying the conductors’ wages and his expenses and keeping any extra as his profit. In my view, *Cocks* is distinguishable from the situation at hand.

[22] The term “hire” also imports a sense of commercial purpose or a purpose of earning income. In *Hood v McKarney and Cooperative Insurance Services Ltd.* (1977), 11 Nfld. & P.E.I.R., the Prince Edward Island Court of Appeal considered whether a vehicle was being used for carrying passengers for compensation or hire within the terms of an insurance policy. Although specific exclusions were held to apply, the Court went on to say that the exclusions need not have been resorted to and that, where the parties took turns giving each other rides and sometimes exchanged money in lieu of taking a turn giving a ride, they were not carrying passengers for hire:

It is clear that the Respondent’s automobile was not being used for carrying passengers as a commercial venture. The words “for hire” carry with them the understanding that the insured would use the vehicle on a commercial basis as a means of earning income, such as are clearly contemplated by the words immediately preceding the phrase “or for carrying passengers for compensation or hire”. Those words are “the automobile is used as a taxi cab, public omnibus, livery, jitney or sight-seeing conveyance.” The

whole tenor of the section is aimed at prohibition of the use of the vehicle as a commercial enterprise. In my opinion, the words “for compensation” should bear the same meaning as the words “for hire” when construing the meaning of this Clause of the policy. I am not making any final decision on this point as it is unnecessary in coming to a decision on the appeal, and the question was not fully argued by Counsel.

I am not convinced that the Respondents can be said to be operating their vehicles “for hire” as those words have been understood and interpreted.

[23] Can it be said that the Respondents are carrying passengers for profit? Profit is generally understood as a financial benefit or gain; in a commercial sense, it usually means the money made over and above the expenses incurred to make the money.

[24] Clearly, the Respondents are obtaining some financial benefit or gain; they are building up their litigation fund.

[25] “Hire” and “profit” do not mean the same thing. One can operate a taxi for hire, yet not make a profit. But the words must be read together and in context. To operate or use a vehicle for the purpose of conveying passengers for hire or profit means, in my view, to operate in a commercial sense, with a view to being paid value for the service provided in the ultimate hope or with the ultimate goal of making a profit.

[26] Here, it cannot be said that the Respondents are paid value for their services. They may or may not receive a donation. If they do, it does not go to compensate them for their time and effort, but rather is directed to the specific purpose of the litigation fund.

[27] I note that some of the definitions or legislation cited by counsel involved the phrase “hire or reward”. “Reward” may be susceptible of a different meaning than “profit”. I do not need to decide whether “reward” would cover the Respondents’ situation; I simply point out that the Town has chosen certain words for its by-law.

[28] Counsel for the Town submits that the regulation of taxis involves aspects of public safety and convenience and that the licensing powers should not be made subject to an overly strict construction: *Robinson v Hay River (Town)*, [1996] N.W.T.R. 384 (S.C.). I agree. But again, the Town has chosen to use certain words in its by-law. It could have, but did not, cast a wider net.

[29] In the result, I am not satisfied on the undisputed facts presented that it can be said that the Respondents are operating a vehicle or vehicles for the purpose of conveying passengers for hire or profit, within the meaning of by-law no. 1599. Accordingly, I must dismiss the Town's application for injunctive relief.

[30] I thank counsel for their submissions.

[31] Costs may be spoken to or written submissions filed in that regard within 30 days of the filing of these Reasons for Judgment.

V. A. Schuler  
J.S.C.

Dated at Yellowknife , Northwest Territories  
this 23rd day of June, 1997.

Counsel for the Applicant: Charles McGee

Counsel for the Respondents  
Harvey Werner & Sylvia Arnold: Earl D. Johnson, QC

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