

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
MATLOW, HARVISON YOUNG, CORNELL JJ

BETWEEN:)	
)	
LAKHVIR BRAR)	T. Hein, for the Applicant
)	
)	Applicant
)	
– and –)	
)	
THE CORPORATION OF THE CITY OF)	K. Mullin, for the Respondent
BRAMPTON)	
)	
)	
)	
)	HEARD: March 19, 2013 in Brampton ON

REASONS FOR JUDGMENT

CORNELL J.:

Overview

[1] The applicant seeks judicial review of the decision to remove his name from a list of individuals who had been accepted as qualified to receive a taxi plate licence from the City of Brampton. The applicant was removed from this list (the “Priority List”) when he failed to demonstrate his continuing eligibility by meet the mandatory requirements set out in the applicable City of Brampton by-law.

[2] The applicant seeks declaratory relief and an order for mandamus to compel the City of Brampton (the “City”) to issue a taxi licence to the plaintiff. For the reasons which follow, the application is dismissed.

Factual Background

[3] After supplying the necessary documentation to prove that he met the appropriate criteria, the applicant had his name placed on the Priority List. Placement on the List would eventually entitle him to receive a taxi licence from the City, so long as he continued to meet the criteria required to remain on the Priority List.

[4] In 2009, the City decided that it would issue ten new taxi licences. As part of this process, the City decided to subject the next twenty individuals on the Priority List to heightened scrutiny to ensure that each person on the list had complied with the mandatory provisions of the by-law and continued to be eligible to receive a license. At this time, the applicant was in second place on the Priority List.

[5] On February 26, 2009, the City notified the applicant that he must submit his taxi run sheets on an on-going basis. The applicant complied with this request.

[6] On April 27, 2009, the City made a further request that the applicant produce a letter confirming his employment as a taxi driver in Brampton for a minimum of 24 hours a week for 40 weeks of the year. The applicant had produced such letters for the previous eight years as required in order to maintain his eligibility.

[7] In May of 2009, the City received three letters indicating that the applicant had been driving with a Toronto cab company since 2002, but since October 2008 he had only driven two to three hours a week in Brampton, that he had previously provided letters confirming his employment in Brampton from individuals who were not authorized to provide such a letter, and that he may be driving a cab for a GTAA airport taxi without a Toronto, Brampton or Mississauga taxi plate.

[8] Faced with this information, the City made further inquiries of the applicant. The applicant explained that he could not provide the letter confirming his employment as a taxi driver in Brampton for the period in question because his employer who would provide such letter was in the twenty-first position on the Priority List and therefore had a vested interest in bringing about the applicant's removal from it.

[9] In the absence of an employment letter, the City attempted to obtain independent confirmation concerning the applicant's work as a taxi driver.

[10] The City contacted the two Brampton taxi companies where the applicant alleged that he had worked during the time period in question. A representative of the first company indicated that the applicant had not worked for them.

[11] Gordon Sherman was the by-law enforcement officer who represented the City in this matter. Mr. Sherman met with a representative of the second company and was advised that although the applicant was meant to drive a cab while the owner was on vacation in India, the

applicant didn't show up for work for the first two weeks, and after that he worked only two days a week at most. Most telling of all was the fact that the applicant asked that the taxi cab company falsely log the applicant into the system to generate records of hours for which the applicant did not actually work.

[12] The City also received information that the applicant held a licence to drive an Ambassador taxi in Toronto. This form of licence requires the taxi to be driven by the owner of the Ambassador licence and that the cab be driven for at least 36 hours per week.

[13] Given the information available, the City concluded that the applicant's name should be removed from the Priority List as he had failed to demonstrate that he had met the continuing eligibility requirements.

[14] Before removing the applicant's name from the Priority List, the City held a meeting with the applicant on October 9, 2009. The applicant was advised of the information the City had received from the two Brampton taxi companies where the applicant alleged that he had worked, as well as the information that had come to light about the applicant's use of a Toronto Ambassador taxi. The applicant did not respond to the allegations made by the Brampton taxi companies, and he declined to provide his driving records for the Toronto Ambassador taxi. In view of this, the City determined the applicant had not met the licensing requirements and found no basis to waive such requirements. The applicant was provided with a letter at the close of the meeting advising him that his name would be removed from the Priority List.

[15] On October 22, 2009, the City advised the applicant that it would reconsider the decision to remove his name from the Priority List if he provided letters from the brokerage and plate owners to support the run sheets that he had filed.

[16] When this documentation was not forthcoming, the City sent a further letter dated November 19, 2009, advising the applicant that his name had been removed from the Priority List in view of his inability to confirm that he met the on-going eligibility requirements.

The By-law

[17] Brampton City By-Law 1-2002 ("the by-law") deals with the issuance of licenses within the City of Brampton. Schedule M-5 deals specifically with taxis. The following excerpts from such Schedule are at the heart of this dispute:

ISSUANCE OF PLATE FROM PRIORITY LIST

29 (1) Whenever a plate is to be issued, it shall be issued to the person whose name appears first chronologically on the Priority List and qualifies;

...

PLACEMENT ON THE PRIORITY LIST

31. Where a completed application along with the appropriate fee for a plate owner's license is received by the License Issuer, which meets all the requirements of this by-law, but where a license cannot be issued because of the limitation on the number of licenses set out herein, the applicant's name shall be placed on the Priority List by the License Issuer for the issuance of owner's plates provided the following requirements are met:

(1) the applicant has been licensed as a driver for at least 12 months prior to the date that the application for the plate owner's license is filed with the licensing section; and

(2) the applicant has been driving a taxicab in the City of Brampton for an average of at least twenty-four (24) hours a week for forty (40) weeks of the twelve (12) month period immediately preceding the date the application is filed with the licensing section, and has filed supporting documentation to that effect to the satisfaction of the License Issuer which documentation may include trip records.

...

STAYING ON THE PRIORITY LIST

35 (By-law 1-2007, 50-2008)

(1) In order to remain on the Priority List, a person must pay the appropriate fee and the License Issuer may require at any time:

(a) a statement in writing signed by every person by whom the applicant was employed or to whom the applicant provided service as a taxicab driver, taxi dispatcher or taxi brokerage office manager, that the applicant worked as such, for at least twenty-four (24) hours per week for forty (40) weeks during the preceding twelve (12) months;

(b) a copy of the applicant's relevant T4 Slips and Income Tax Return for the preceding year in the form in which it was submitted to the Federal Government; or

(c) a copy of trip records for the preceding year.

(2) Any person on the Priority List who fails to provide the required documentation shall be removed from the Priority List (By-law 1-2007).

The Issues

[18] The applicant raises the following issues for consideration:

1. Is this a proper matter for judicial review?
2. Is the by-law invalid?
3. Was the by-law officer's discretion fettered?

Court's Jurisdiction

[19] It was acknowledged by both parties that the decision to remove the applicant from the Priority List was a decision made in the exercise of a statutory power and is therefore subject to judicial review.

The Standard of Review

[20] The two-step process to determine the appropriate standard of review of an administrative decision is set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 62:

First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[21] After setting out the circumstances in which correctness would be the appropriate standard for review, the court in *Dunsmuir* goes on to find that deference is required where the court is asked to review a question of fact, discretion or policy, or “where the legal and factual issues are intertwined” and “cannot be readily separated” (para. 53).

[22] The approach to be taken for the interpretation of municipal legislation is set out in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] S.C.R. 485, 2004 where the court stated at para. 8:

A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally.

[23] It has been determined that the powers conferred on a municipality attract “an expansive and deferential interpretation”. See *Toronto Livery Assoc. v. Toronto (City)*, 2009 ONCA 535, [2009] O.J. No. 2725 at para. 44.

[24] In this case, the decision was made by a person with particular experience in the field of municipal licensing. The decision required an application of the mandatory provisions of the by-law to the specific facts of this case. The decision was highly contextual and fact-dependent. It did not involve a question of central importance to the legal system. Accordingly, the standard of review is reasonableness.

Analysis

[25] There is no dispute that the applicant met the requirements in order to be placed on the Priority List, and that he satisfied the requirements for staying on the Priority List for a period of eight years. In particular, the applicant was able to satisfy the requirement contained in s. 35(1)(a) of the by-law in that he was able to provide a statement in writing that the applicant had worked as a taxi driver for a least 24 hours per week for 40 weeks during the preceding 12 months.

[26] However, in 2009, the applicant provided hand-written trip records to try to establish that he met the eligibility requirements for the year in question. Mr. Sherman's evidence was that the City had concerns about the reliability of hand-written trip records because it was open to the applicant to prepare them at any time. It was known to Mr. Sherman, as a result of working in the by-law licensing and enforcement field for 22 years, that fraud is commonplace in the contest for taxi licences. Once issued, such licences sell for \$80,000 to \$107,000. Given the re-sale value of the licence, it was the experience of both Mr. Sherman and the Licensing Department that there had been many cases where applicants have filed false or misleading documentation. In view of this, Mr. Sherman wanted to ensure that all applicants continued to meet the eligibility requirements.

[27] Counsel for the applicant took great pains to point out that the criteria for staying on the Priority List set out in s. 35 of the by-law was different than the criteria for placement on the Priority List pursuant to s. 31. Section 31 specified that individual must drive a taxicab in the City of Brampton, unlike in s. 35 which does not specify where the driving must take place.

[28] It is true that this difference exists. By way of explanation, the affidavit material provided by the City makes it clear that the intention of the by-law was to ensure that the applicants for taxi licences are knowledgeable about the City of Brampton, and to reward them for their years of loyal service prior to receiving a taxi licence. During the course of cross-examination of the applicant on his affidavit, the following exchange took place:

Q. So, you understand at the time you swore this affidavit that you had to drive the required number of hours in Brampton to stay on the Priority List?

A. For the Brampton plate with the GTA, either I can drive in the airport or I can drive in the City of Brampton, which both Mr. Sherman accepted.

Q. But you ---

A. I was driving in the City of Brampton plate, yes.

Q. You understood that you had to drive in Brampton or drive a Brampton plate in order to ---

A. Brampton plate, yes.

Q. In order to stay on the list? And in fact, if you turn back to paragraph 6, you say, "In order to stay on the Priority List, I had to continue to operate a taxi in the City of Brampton and pay a fee every single year." So, that was your understanding at the time you swore this affidavit?

A. Yes.

Q. That was your understanding in 2009?

A. Yes.

[29] There can be no doubt that the applicant knew that he was required to complete the necessary hours to maintain his eligibility by driving a taxicab in the City of Brampton. This is clear not only given his answers on the cross-examination, but also from the fact that he provided documentation confirming that he had done this in each of the previous eight years. He further asserted that he had done so in the ninth year as well, despite the fact that the Brampton brokers for whom the applicant claimed to have worked indicated that this information was not true. The applicant was unable to obtain a written statement to confirm that he continued to meet the eligibility requirements as he had done the previous eight years

[30] Inquiries by the City revealed that the applicant held an Ambassador taxi licence in Toronto which obligated him to drive a cab in Toronto for 36 hours a week. When asked to provide the records for this licence, the applicant refused to do so. Inquiries of the two Brampton cab companies that the applicant claimed to have worked for provided information that contradicted the information being provided by the applicant. All of this information was disclosed to the applicant who was given multiple opportunities to provide the required information, or to give a satisfactory explanation as to why it was not available. When neither was forthcoming, Mr. Sherman ultimately reached the conclusion that the applicant had not provided the required information because he had not complied with the requirements to remain on the Priority List.

[31] Counsel for the City indicated that in such circumstances, it was mandatory for the City to remove the applicant from the Priority List in accordance with the terms of the by-law. She went on to say that even if it was determined that the applicant was not required to drive the minimum time required in the City of Brampton, the information provided by the applicant still showed that he failed to meet the eligibility requirements.

[32] The trip records filed by the applicant show that for the 12-month period ending May 31, 2009, the applicant only worked 32 weeks for at least 24 hours per week even if the applicant's Toronto taxi time is included. If it is excluded, then the applicant has only 24 weeks of eligible service and not the 40 weeks as required by the by-law.

[33] The applicant attempted to challenge this evidence by pointing to certain hand-written notations on his trip sheets showing that he had started earlier in the day, but that time had passed before he obtained his first fare. However, as with the hand-written trip logs, these trip

sheets were prepared by the applicant and raise the same concerns about false or misleading information being provided. The applicant never provided the log-in records required to be kept by the taxi companies that could have served as independent proof that he met the continuing eligibility requirements of the by-law.

Is the By-Law Invalid?

[34] The applicant acknowledged the power of the City to make by-laws concerning the issuance of taxi licences, and that such a by-law could be applied in a way that does not infringe procedural fairness. The applicant argued that was not done in this case because there is no right of appeal when the by-law officer is “inflexible” in requiring all three forms of documentation to be provided to remain on the Priority List, or when the by-law officer requires a type of documentation that is impossible to obtain.

[35] The difficulty in this argument lies in the fact that not all three forms of the documentation were immediately required. It was only when information came to light that the documentation provided by the applicant might not be reliable that the by-law officer requested additional information. The facts indicate that the by-law officer exercised his discretion and that not all of the documentation was automatically required as was the case under the by-law prior to its amendment.

[36] At the time of the amendment of the by-law, the right to appeal the removal of an individual’s name from the Priority List was removed, and discretion was granted to the by-law officer to determine what documentation was necessary. These legislative choices must be treated with deference.

[37] The courts have determined that there are no inherent rights of appeal, and that appeal rights can only be created by statute. It was open to the municipality to choose not to have an appeal process. See *Kourtessis v. Canada (Minister of National Revenue)*, [1993] 2 S.C.R. 53 at pp. 69-70.

[38] As additional concerns were discovered, the City gave the applicant additional opportunities to provide documentation. When this documentation was not forthcoming, the City convened a meeting to advise the applicant of the information available to the City. The applicant was then given yet a further opportunity to meet the requirements of the by-law, but he failed to do so. In taking these steps, the City met the duty of procedural fairness that it owed to the applicant.

Fettering of Discretion

[39] It was also suggested on behalf of the applicant that the fact that he was asked to provide all of the documentation set out in s. 35 of the by-law was evidence that the City had fettered its discretion. In answer, the City pointed out that there was no policy in place which required that all of the documentation be provided. To the contrary, the by-law had undergone an amendment to remove the requirement that all three forms of documentation be provided which was replaced

with a new regime whereby such documentation “may” be required within the discretion of the licensing official in order to introduce greater flexibility into the process. The fact that additional documentation was required at different times indicates that the by-law officer was exercising his discretion in response to legitimate concerns that had been raised and not as a result of some inflexible policy which was in place. Nothing in the evidence before the court suggests that there is any basis to find that the City fettered its discretion during the course of its dealings with the applicant.

Conclusion

[40] The applicant suggested that this was an appropriate case for the court to issue a *mandamus* order to require the City to issue to the applicant a taxi licence. While I agree that, on an appropriate set of facts, the power exists in this court to make such an order, the facts of this case do not warrant that course of action.

[41] Despite being given various opportunities to do so, the applicant was unable to satisfy the onus which rested upon him to demonstrate that he met the requirements to stay on the Priority List for the period ending May 31, 2009, as he had done in the previous eight years. There is nothing to suggest that the applicant was subject to any procedural unfairness nor is there any basis to suggest that the municipal officials fettered their discretion. Accordingly, the application is dismissed.

Costs

[42] If the parties cannot agree on costs, the City shall make brief written submissions through the Divisional Court office within ten days of the release of these Reasons, with the applicant responding within ten days thereafter.

Matlow, J.

Harvison Young, J.

Cornell J.

Released: June 17, 2013

CITATION: Brar v. Brampton (City), 2013 ONSC 1692
BRAMPTON DIVISIONAL COURT FILE No.: DC-12-00018-00JR
DATE: 20130617

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SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

LAKHVIR BRAR

Applicant

– and –

THE CORPORATION OF THE CITY OF
BRAMPTON

Respondent

REASONS FOR JUDGMENT

MATLOW, HARVISON YOUNG, CORNELL JJ.

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