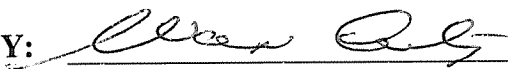


8.2



Halifax Regional Council
September 10, 2002

TO: Mayor Kelly and Members of Regional Council

SUBMITTED BY: 
Wayne Anstey, Q.C., Municipal Solicitor

DATE 24 July 2002

SUBJECT **First Reading - By-Law T-122,**
Respecting Taxi and Limousine
Councillor Adams - Move First Reading

INFORMATION REPORT

ORIGIN

At the Regional Council meeting of August 27, 2002, Councillor Adams gave notice of motion that he would on September 03, 2002 introduce a motion that the Taxi and Limousine By-law be amended to increase the drop rate by \$1.00 and further that provision be added to allow drivers to charge a "cleanup fee" to people who vomit in the car plus a "loss of business fee" for the time the car is out of service being cleaned. The rate in each case would be \$50 for a total of \$100 per incident. At the meeting of September 05, 2002, Councillor Adams deferred First Reading to the meeting of September 10 to allow Municipal Solicitor to comment on HRM's jurisdiction in respect of the proposed amendment.

BACKGROUND/DISCUSSION:

The matters which Council has jurisdiction to regulate in respect of the taxi industry are enumerated in Section 305 of the *Motor Vehicle Act*. The provision which is applicable to the issues raised with this requested amendment is Section 305(2)(b) and (c) which state:

- 305 (2) Such regulations or by-laws (respecting persons transporting for hire by means of any vehicle) may ...
 - (b) provide penalties for any violation of such regulations or by-laws, but such penalties shall not be greater than the penalties mentioned in Section 299;
 - (c) provide minimum and maximum fares or rates that may be charged by any persons transporting for hire passengers or goods;

There is no jurisdictional issue with the increase in the drop rate by \$1.00. This is merely a component of the "fares and rates" that are already prescribed by the By-law.

We are of the opinion however that the "cleanup fee" and "loss of business fee" are not fares and rates as references in Clause (c) but rather a form of penalty for a prescribed action under Clause (b) and in that respect would be in contravention of that clause in that the penalty would exceed the amount prescribed by that Clause. Furthermore, the provision would be an improper delegation of authority by Council in that it would make the taxi-driver as opposed to the Courts the determiner as to whether the penalty was payable. It would also violated the Charter of Rights and Freedoms in that it would remove the ability of the passenger to put forward a defence in the proper legal forum.

In addition, the penalty would be a form of "double dipping" in the sense that the fares and rates now prescribed arguably already take into account the business reality that events, such as passengers getting sick, will occur in the everyday operation of a taxi that will impose costs and take time to remediate. If there is merit to the amendment then it could be argued that a fee should be charged to tire companies when the taxicab has a flat or to people who are involved in accidents with cabs. These are obviously untenable scenarios. That is not to say that the taxi driver would not have a civil claim against any of these people, it is just that the expenses do not form the proper subject matter of a fare.

In addition to the foregoing, taxi drivers often have problems collecting the fare itself. It can only be imagined how much more difficult it would be collecting this additional penalty.

Accordingly it is the opinion of Legal Services that Regional Council does not have the authority to prescribe a "clean-up fee" and "loss of business fee" as proposed by Councillor Adams.

A copy of an amending by-law to provide for a \$1.00 increase in the drop rate is attached as Appendix "A" should Council choose to provide for such a fare increase.

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Wayne Anstey, Q.C., Municipal Solicitor 490-4229.

Report approved by: 
Wayne Anstey, Director of Administrative Services 490-4229

Appendix "A"

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW NUMBER T-122**

RESPECTING THE REGULATION OF TAXIS AND LIMOUSINES

BE IT ENACTED by the Council of the Halifax Regional Municipality, under the authority of Section 305 of the Motor Vehicle Act, Chapter 293, R.S.N.S. 1989 that By-law T-108, the Halifax Regional Municipality Taxi and Limousine By-law be and the same is amended as follows:

1. Schedule 2 of said By-law T-108 is amended by deleting the words "**TWO DOLLARS AND FIFTY CENTS** initial charge , up to 1/30 mile" and by substituting therefor the words "**THREE DOLLARS AND FIFTY CENTS** initial charge , up to 1/30 mile".