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THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2019

ADMINISTRATIVE LAW

Section 372.002
Professor Jocelyn Stacey

TOTAL MARKS: 40

TIME ALLOWED: 2 HOURS

NOTES:

1. This is a limited open book examination. You are allowed to bring your course materials and notes, but not textbooks or library books.
2. This examination consists of one problem with three issues. Allocate your time wisely. Ensure you address all three issues.
3. Only consider the issues related to administrative law. Rely only on materials for Law 372 (Administrative Law) for your analysis.
4. Turn off all mobile devices.
5. If you are handwriting, please write legibly on every second line of your exam booklet and on one side of the page only.
6. Do not write your name at any place on the exam or any printed materials. All materials must be returned at the end of the exam.

GOOD LUCK!

Ride-hailing services, such as Uber and Lyft, offer an alternative to taxi services. Users can hail a car and driver for immediate transportation through an online app. British Columbia is in the process of legalizing and regulating ride-hailing in the province, with ride-hailing expected to be available at the end of 2019 or early 2020.

The BC Passenger Transportation Board (“PTB” or “Board”) is an independent tribunal which is responsible for making determinations regarding the authorization of taxis, limousines, shuttle vans and inter-city buses. Recent legislative amendments give the PTB the power to authorize and regulate “transportation network services.” Transportation network services is the phrase used in the legislation to describe ride-hailing services (e.g. Uber and Lyft).

Salmon Run is a start-up ride-hailing service designed by and for Indigenous women. Salmon Run provides an alternative to taxis and other ride-hailing providers, for which there are concerns about the safety of female Indigenous passengers. Salmon Run only employs women as drivers. It requires prospective drivers pass an extensive background screening and interview before they are hired.

Salmon Run applied for an authorization to operate as a “transportation network service” in BC. It submitted its application and the application fee to the PTB. The PTB published a public notice of Salmon Run’s application, following its ordinary application process.

The BC Taxi Association (“the Association”) is a not-for-profit organization which exclusively represents conventional taxi companies in BC. It does not represent alternative transportation services, such as ride-hailing. Indeed, the Association is opposed to ride-hailing services in BC. It has opposed every application to the PTB made by ride-hailing providers. The Association submitted a comment to the PTB opposing Salmon Run’s application. The Association notes that Salmon Run is a new organization with no proven record of reliable service and it claims that the business plan is not viable because of the limited market of potential passengers. It notes that the applicant did not provide any actual proof of public need, such as letters of support from potential users. The Association is further concerned that authorizing “niche” or “specialized” ride-hailing services will make it difficult to monitor the services provided by the industry as a whole and will lead to an overall decline in passenger transportation industry standards.

The PTB completed its review of the application without any further engagement with the Association. The PTB approved Salmon Run as a transportation network service. The Board’s decision was published in its weekly bulletin. The decision stated:

The Board considers *fitness* and *capability* in the context and circumstances of an application. The Board observes that Salmon Run has developed a suitable online platform that is tailored to its target ridership. The general organizational structure of Salmon Run appears sound. However, the Board notes that there are gaps in the business plan for Salmon Run. Salmon Run has not provided detailed information about prospective ridership and revenue. Indeed, Salmon Run admits that it will not know how

viable its business model is until it begins to operate. Salmon Run asks the Board to give it a chance. The Board agrees that Salmon Run deserves a chance.

The Board considers *public need* for the service and promotion of *sound economic conditions* together. Ordinarily, the Board expects applicants to show that there is an “unmet” public need. Past decisions of the Board state that: “Applicants should not rely on their opinion or general statements to show public need.” Salmon Run has not provided the depth and specificity of information that the Board ordinarily asks of applicants. However, the Board is of the view that in these circumstances this information is not required. The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Report¹ speaks to the need for safe and affordable transportation for the specific demographic of Indigenous women and girls. Salmon Run offers one path for fulfilling this call to justice.

The Board must also determine whether the service will be *inclusive* and *accessible*. The Board adopts the position of its staff lawyers that “inclusive and accessible” must be given a meaning consistent with the British Columbia Human Rights Code. The Board adopts the submissions of its staff lawyers that Salmon Run is a special program that cannot be considered discrimination within the meaning of BC human rights law.

The Board approves Salmon Run’s application.

Shortly after the release of its bulletin, the Board was served with a notice of application for judicial review by the Association. The Association challenges the Board’s approval of Salmon run on the following bases. The Association alleges:

- i. The undisclosed consultation between the Board and its legal counsel rendered the hearing unfair.
- ii. The Board’s treatment of whether the service was inclusive and accessible was unlawful.
- iii. The Board’s decision to approve Salmon Run’s application was unlawful.

The Board has not yet received the Association’s memorandum of argument, which details the Association’s specific arguments. You are junior legal counsel for the PTB. In preparation for responding to this judicial review, write a memo analysing issues (i), (ii) and (iii). Consider persuasive arguments that can be made in support of the PTB and the Association. Advise the PTB on the likelihood that the Court will intervene and quash its decision on each of issues (i), (ii), and (iii).

¹ This is a major government report issued after a lengthy public inquiry. Call for Justice 4.8 addresses the need for safe, affordable and accessible public transportation for all Indigenous communities in Canada.

Appendix: Statutory Sources

Passenger Transportation Act, SBC 2004, c 39

1 In this Act

...

"**board**" means the Passenger Transportation Board established under section 6;

...

"**transportation network services**" means either of the following:

- (a) services respecting the connection of drivers of passenger directed vehicles with passengers who hail and pay for the services through the use of an online platform;
- (b) prescribed services;

"**transportation network services authorization**" means an authorization that, if included in a licence,

- (a) authorizes the licensee to provide transportation network services, and
- (b) authorizes one or more motor vehicles to be operated as passenger directed vehicles, but only if those motor vehicles are hailed through the use of the transportation network services;

...

6 (1) The Passenger Transportation Board is established, consisting of at least 3 persons appointed, after a merit-based process, by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council must designate one of the persons appointed under subsection (1) as chair of the board.

(3) The following provisions of the *Administrative Tribunals Act* apply to the board

- (a) section 27, and
- (b) section 30.

...

24 (1) A person may apply to the board for a licence.

(2) An application for a licence must set out the authorizations sought by the applicant.

(3) After receiving an application under subsection (1), the board must publish notice of the application in a manner that, in the opinion of the board, is reasonably sufficient to bring to the attention of the public the fact and nature of the application.

25 (1) For any application under section 24(1), the board

- (a) must defer its consideration of the application for a period of at least 7 days after the date on which the notice referred to in section 24(3) is published, and

(b) may require further information from the applicant, including written or oral submissions.

(2) Any person may, within the time period specified by the board and on payment of the prescribed fee, make a written submission to the board respecting the application forwarded to it under section 24 (1).

(3) After considering an application under section 24 (1) and any written submissions provided under subsection (1) (b) or (2) of this section, the board may do one or more of the following at any time after the expiry of the 7 day period referred to in subsection (1) (a):

- (a) seek further information or comment from any person;
- (b) conduct an investigation in respect of any matter related to the application; or
- (c) review the application and make a determination based on the application and submissions.

26 (1) The board may approve, in whole or in part, an application under section 24 (1) after considering whether

- (a) there is a public need for the service the applicant proposes to provide under any authorization,
- (b) the applicant is a fit and proper person to provide that service and is capable of providing that service,
- (c) the application, if granted, would promote sound economic conditions in the passenger transportation business in British Columbia, and
- (d) the service provided will be inclusive and accessible, with particular regard to passengers with disabilities.

(2) If the board approves an application for a licence, the board must specify the conditions that should be included in the licence, if issued.

27 (1) The board must make its final decision, with reasons, in writing and must make any final order in writing.

(2) A decision of the board is effective on the date it is issued by the board, unless otherwise specified by the board.

(3) The board must make its decisions and orders accessible to the public in the manner it considers appropriate.

...

37 Despite any other provision of this Act, in any circumstance in which, under this Act, a hearing may or must be held, the board may conduct a written, electronic or oral hearing, or any combination of them, as the board, in its sole discretion, considers appropriate.

38 The Board must act fairly in all its dealings with all persons and members of the public who participate in the Board's proceedings.

...

42 (1) The board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under this Act and to make any order permitted to be made.

(2) A decision or order of the board under this Act on a matter in respect of which the board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

Administrative Tribunals Act, SBC 2004, c 45

27 (1) Employees necessary to carry out the powers, functions and duties of the tribunal may be appointed under the *Public Service Act*.

(2) The chair of the tribunal may engage or retain consultants, investigators, lawyers, expert witnesses or other persons the tribunal considers necessary to exercise its powers and carry out its duties and may determine their remuneration.

...

30 Tribunal members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

Human Rights Code, RSBC 1996, c 210

13 (1) A person must not
(a) refuse to employ or refuse to continue to employ a person, or
(b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

(2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

41 If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, sexual orientation, gender identity or expression, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

Guidelines for Approval for Transportation Network Service (19-001)

1 These guidelines are a non-binding policy which offer guidance to applicants and Board members on approvals for transportation network service.

2 Determinations of public need for the service and promotion of sound economic conditions will be considered together. The Board will consider:

- Publicly available information about the overall passenger transportation industry,
- Individual statements of support and need for the provider,
- Overall integrity of the passenger transportation industry.

3 Determinations of whether the applicant is fit and proper will consider:

- The applicant's business plan, including organizational structure and process for managing drivers,
- The functionality of the online platform to be used by drivers and passengers,
- Cash-flow projections for 36 months, including quantification of ridership projects and passenger revenues,
- Past experience of officers and directors of the organization.

4 Determinations of whether the applicant will provide inclusive and accessible services will consider:

- Whether the online platform is accessible to visually impaired passengers,
- The number of vehicles and drivers who can serve passengers with mobility challenges,
- The applicant's capacity to provide service in multiple languages,
- The applicant's proposed training for drivers on cultural sensitivity.

5 The onus is on the applicant to persuade the Board that the required criteria under s 26 of the Act are satisfied.

HAPPY WINTER BREAK!

* END OF EXAM *