



# SPECIAL COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE SELECTION SHEET/AGENDA

October 15, 2015 – River Valley Room

9:30 am	Call to Order	3:30 - 3:45 pm	Recess
12 noon - 1:30 pm	Lunch	4:30 pm	Adjournment

## MEMBERS

T. Caterina, B. Anderson, M. Oshry

ITEM		ACTION
<b>1.</b>	<b>CALL TO ORDER AND RELATED BUSINESS</b>	
1.1	Call to Order	
1.2	Adoption of the Agenda	
<b>2.</b>	<b>EXPLANATION OF APPEAL HEARING PROCESS</b>	
<b>3.</b>	<b>COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS</b>	
3.1	Appeal of the decision to suspend <ol style="list-style-type: none"> <li>1. Taxi Driver's Licence 158885749-001 issued to G/A. B.;</li> <li>2. Taxi Driver's Licence 163309311-001 issued to I. A.;</li> <li>3. Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001 issued to A. S.;</li> <li>4. Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002 issued to E. Z. M.;</li> <li>5. Taxi Driver's Licence 146173592-001 issued to B. S. G.;</li> <li>6. Taxi Driver's Licence 149720230-001 issued to M. T.</li> </ol>	
<b>4.</b>	<b>ADJOURNMENT</b>	

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# SPECIAL COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE

## MINUTES

October 15, 2015 – River Valley Room

### PRESENT

T. Caterina, B. Anderson, M. Oshry

### ALSO IN ATTENDANCE

S. McDonald, Office of the City Clerk  
 C. Ashmore, Law Branch  
 J. Rose, Office of the City Clerk

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3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS	2	
3.1 Appeal of the decision to suspend		
1. Taxi Driver's Licence 158885749-001 issued to G/A. B.;	2	CANCELLED
2. Taxi Driver's Licence 163309311-001 issued to I. A.;	2	CANCELLED
3. Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001 issued to A. S.;	2	CANCELLED
4. Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002 issued to E. Z. M.;	2	CANCELLED
5. Taxi Driver's Licence 146173592-001 issued to B. S. G.;	2	CANCELLED
6. Taxi Driver's Licence 149720230-001 issued to M. T.	2	CANCELLED
4. ADJOURNMENT	3	

### DECISION SUMMARY

ITEM	DECISION
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1. CALL TO ORDER AND RELATED BUSINESS

**1.1 Call to Order**

Councillor Caterina called the meeting to order at 9:40 a.m.

**1.2 Adoption of Agenda**

**Moved B. Anderson:**

That the October 15, 2015 Special CSLAC Agenda be adopted.

**In Favour:**

T. Caterina, B. Anderson, M. Oshry

**Carried**

**2. EXPLANATION OF APPEAL HEARING PROCESS**

Councillor Caterina explained the appeal hearing process and asked if anyone objected to any Member of the Community Standards and Licence Appeal Committee hearing the appeals. No one objected.

**3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS**

**Appeal of the decision to suspend**

3.1

- 1. Taxi Driver’s Licence 158885749-001 issued to G/A. B.;**
- 2. Taxi Driver’s Licence 163309311-001 issued to I. A.;**
- 3. Taxi Driver’s Licence 167096693-001 and Limo Driver’s Licence 167097724-001 issued to A. S.;**
- 4. Taxi Driver’s Licence 108035256-001 and Limo Driver’s Licence 126941707-002 issued to E. Z. M.;**
- 5. Taxi Driver’s Licence 146173592-001 issued to B. S. G.;**
- 6. Taxi Driver’s Licence 149720230-001 issued to M. T.**

P. Moreau, Appellant, made a presentation and answered the Committee’s questions.

C. Ashmore, Counsel for the Community Standards and Licence Appeal Committee answered the Committee’s questions.

The Committee met in private at 10:49 a.m., pursuant to Section 4 and 27 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 11:21 a.m.

**Moved B. Anderson:**

The decision of this Committee is to cancel the decisions of

**Due Date:**

<p>the Chief Livery Officer to suspend the Licences for the six appellants</p> <ol style="list-style-type: none"> <li>1. Taxi Driver's Licence 158885749-001;</li> <li>2. Taxi Driver's Licence 163309311-001;</li> <li>3. Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001;</li> <li>4. Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002;</li> <li>5. Taxi Driver's Licence 146173592-001;</li> <li>6. Taxi Driver's Licence 149720230-001</li> </ol>	<p>October 15, 2015</p>
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**In Favour:**

**Carried**

T. Caterina, B. Anderson, M. Oshry

**4. ADJOURNMENT**

The meeting adjourned at 11:23 a.m.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
City Clerk

**Appeal of the decision to suspend:**

1. **Taxi Driver's Licence 158885749-001;**
2. **Taxi Driver's Licence 163309311-001;**
3. **Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001;**
4. **Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002;**
5. **Taxi Driver's Licence 146173592-001;**
6. **Taxi Driver's Licence 149720230-001**

**Hearing Date: October 15, 2015**

In dealing with this appeal, the Community Standards and Licence Appeal Committee ("the Committee") heard from:

Appellant: P. Moreau, Moreau & Company, Counsel for Appellants  
Counsel for the Committee: C. Ashmore, Law Branch, City of Edmonton

**Written Submissions**

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- Record from the Chief Livery Officer

**Background**

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On May 29, 2015 Mr. Garry Dziwenka, the Chief Livery Officer (CLO) for the City of Edmonton, issued a letter proposing to suspend Taxi Driver's Licence 158885749-001 issued to [REDACTED] [REDACTED]

On June 2, 2015, a written response was received from Moreau & Company, legal counsel for Mr. [REDACTED] requesting that Taxi Driver's Licence 158885749-001 not be suspended.

In a letter dated June 29, 2015, the CLO, suspended Taxi Driver's Licence 158885749-001 issued to [REDACTED] [REDACTED] pursuant to section 104 of the Vehicle for Hire Bylaw (14700).

On July 9, 2015, the decision to suspend Taxi Driver's Licence 158885749-001

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Appeal of the decision to suspend:  
Taxi Driver's Licence 158885749-001;  
Taxi Driver's Licence 163309311-001;  
Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001;  
Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002;  
Taxi Driver's Licence 146173592-001;  
Taxi Driver's Licence 149720230-001  
Pursuant to Section 104 of the *Vehicle for Hire Bylaw (14700)*

## **Background**

was appealed by Moreau & Company.

On May 25, 2015 Mr. Garry Dziwenka, the Chief Livery Officer (CLO) for the City of Edmonton, issued a letter proposing to suspend Taxi Driver's Licence 163309311-001 issued to [REDACTED]

On June 2, 2015, a written response was received from Moreau & Company, legal counsel for Mr. [REDACTED] requesting that Taxi Driver's Licence 163309311-001 not be suspended.

In a letter dated June 29, 2015, the CLO, suspended Taxi Driver's Licence 163309311-001 issued to [REDACTED] pursuant to section 104 of the Vehicle for Hire Bylaw (14700).

On July 9, 2015, Moreau & Company appealed the decision to suspend Taxi Driver's Licence 163309311-001.

On May 27, 2015 Mr. Garry Dziwenka, the Chief Livery Officer (CLO) of the City of Edmonton, issued a letter proposing to suspend Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001 issued to [REDACTED]

On May 29, 2015, a written response was received from Moreau & Company, legal counsel for Mr. [REDACTED] requesting that Taxi Driver's Licence Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001 not be suspended.

In a letter dated June 29, 2015, the CLO, suspended Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001 issued to [REDACTED] pursuant to section 104 of the Vehicle for Hire Bylaw (14700).

On July 9, 2015, Moreau & Company appealed the decision to suspend Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001.

On May 27, 2015 Mr. Garry Dziwenka, the Chief Livery Officer (CLO) of the City of Edmonton, issued a letter proposing to suspend Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002 issued to [REDACTED] Z.

On May 29, 2015, a written response was received from Moreau & Company, legal counsel for Mr. [REDACTED] requesting that Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002 issued to [REDACTED] Z. [REDACTED] not be suspended.

In a letter dated June 29, 2015, the CLO, suspended Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002 issued to [REDACTED] Z. [REDACTED] pursuant to section 104 of the Vehicle for Hire Bylaw (14700).

## Background

On July 9, 2015, Moreau & Company appealed the decision to suspend Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001.

On May 22, 2015 Mr. Garry Dziwenka, the Chief Livery Officer (CLO) of the City of Edmonton, issued a letter proposing to suspend Taxi Driver's Licence 146173592-001 issued to [REDACTED] S. [REDACTED]

On May 29, 2015, a written response was received from Moreau & Company, legal counsel for Mr. [REDACTED] requesting that Taxi Driver's Licence 146173592-001 issued to [REDACTED] S. [REDACTED] not be suspended.

In a letter dated June 29, 2015, the CLO, suspended Taxi Driver's Licence 146173592-001 issued to [REDACTED] S. [REDACTED] pursuant to section 104 of the Vehicle for Hire Bylaw (14700).

On July 9, 2015, Moreau & Company appealed the decision to suspend Taxi Driver's Licence 146173592-001 issued to [REDACTED] S. [REDACTED]

On May 29, 2015 Mr. Garry Dziwenka, the Chief Livery Officer (CLO) of the City of Edmonton, issued a letter proposing to suspend Taxi Driver's Licence 149720230-001 issued to [REDACTED] [REDACTED]

On June 5, 2015, a written response was received from Mr. [REDACTED] requesting that Taxi Driver's Licence 146173592-001 not be suspended.

In a letter dated July 6, 2015, the CLO, suspended Taxi Driver's Licence 149720230-001 issued to [REDACTED] [REDACTED] pursuant to section 104 of the Vehicle for Hire Bylaw (14700).

On July 20, 2015, Moreau & Company, legal counsel for Mr. [REDACTED] appealed the decision to suspend Taxi Driver's Licence 149720230-001 issued to [REDACTED]  
[REDACTED]

## Appeal Hearing

At the start of the hearing the Committee confirmed that the arguments that were being made by the Appellant were the same for each of the 6 different cases. As such separate arguments did not need to be made on each case and the 6 items on the agenda could be treated as a single item.

P. Moreau, Solicitor for the Appellants, appealed the decision of the Chief Livery Officer to cancel Taxi Driver's Licence 158885749-001 issued to [REDACTED]

## Appeal Hearing

As a result of the investigation into unlicensed taxis, the following tickets were issued to Girma [REDACTED] [REDACTED]

Section 4(1) *Vehicle for Hire Bylaw (14700)* - Operate without a vehicle for hire licence

Section 4 *Business Licence Bylaw (13138)* - Operate without a business licence.

Mr. Moreau will be disputing the two violation tickets before the courts on behalf of Mr. [REDACTED]. His argument centered around the fact that since guilt had not yet been proven in a Court that the suspension of Mr. [REDACTED]'s taxi driver licence as well as the other five appellants was premature.

Mr. Moreau disagrees with paragraphs three and four on the third page of the decision of the Chief Livery Officer in that guilt has been assumed without having been proven in court, and that presumption is inconsistent with the guarantee in the Charter of Rights and Freedoms which states that everyone is presumed innocent until proven guilty.

Mr. Moreau discussed a 1959 Supreme Court of Canada decision – *Roncarelli v. Duplessis* [1959] SCR 121- that he believed related to these appeals in that the allegations of the two violations which have not yet been proven in Court is not sufficient grounds to remove a privilege otherwise previously invested to the Appellant.

There have been approximately 54 drivers ticketed with similar offenses. Only one case has gone to trial and that individual was found not guilty by the Court. The other cases are still waiting to be heard in Court.

Mr. Moreau discussed a 1993 case – *White Hatter Limousine Service Ltd. v. Calgary (City)* 22 Admin LR (2d) 120. Mr. Moreau references paragraph 37 of the decision which states that the Bylaw Inspectors went well beyond the requirement to enforce a bylaw and were seeking to stop the Plaintiff from operating its business before the validity of the charges had been determined. Mr. Moreau claims that this is what's happening with these 6 appeals.

When asked if his submission is the same for all 6 appeals, the Appellant confirmed that he has the same submission on all the appeals and consented to the



## Appeal Hearing

6 appeals being heard and determined as one.

Mr. Ashmore, Legal Counsel for the Committee, and Mr. Moreau were asked to provide information on the *Vehicle for Hire Bylaw* and how it relates to the jurisdiction of the Chief Livery Officer to make a decision regardless if the violation tickets have been prosecuted or not. Mr. Ashmore clarified that the Bylaw permits the City Manager to make a decision based upon reasonable grounds regardless of the prosecution of the elements.

Mr. Moreau was asked for clarification on the allegations of the other 54 drivers, but he was unable to provide it, also stating that the Committee is not in a position to make a finding of fact on the validity of the tickets as there is no Respondent to speak to the allegations.

Mr. Ashmore confirmed that according to Section 10 of the *Community Standards and Licence Appeal Committee Bylaw*, an appeal to the Committee initiates a stay on the Chief Livery Officer's (CLO) decision. The Clerk confirmed that the stay of appeals is outlined in the hearing notice which was received by Mr. Moreau's office on August 11, 2015. The Committee confirmed with Mr. Ashmore that if there was no appeal, the suspension would have remained in effect until the violation tickets were decided on by the courts.

In closing, Mr. Moreau reiterated that he believes the Chief Livery Officer violated the presumption of innocence based on unproven allegations and that there are not reasonable grounds for the suspensions. Mr. Moreau consented to using his submission on the first appeal to apply to all six appeals.

### Decision

The Committee cancels the decision of the Chief Livery Officer to suspend

1. Taxi Driver's Licence 158885749-001 issued to Girma [REDACTED] [REDACTED] dated June 29, 2015;
2. Taxi Driver's Licence 163309311-001 issued to [REDACTED] dated June 29, 2015;
3. Taxi Driver's Licence 167096693-001 and Limo Driver's Licence 167097724-001 issued to [REDACTED] [REDACTED] dated June 29, 2015;
4. Taxi Driver's Licence 108035256-001 and Limo Driver's Licence 126941707-002

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Taxi Driver's Licence 146173592-001;  
Taxi Driver's Licence 149720230-001  
Pursuant to Section 104 of the *Vehicle for Hire Bylaw (14700)*

issued to [REDACTED] Z. [REDACTED] dated June 29, 2015;

5. Taxi Driver's Licence 146173592-001 issued to [REDACTED] S. [REDACTED] dated June 29, 2015;
6. Taxi Driver's Licence 149720230-001 issued to [REDACTED] [REDACTED] dated July 6, 2015.

### **Relevant Legislation**

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*COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE BYLAW  
15166*

1 (e.2) "Licensing Decision" means the decision to refuse, revoke, or suspend a licence, or impose conditions on a licence issued pursuant to the following bylaws of Council:

- (i) *Animal Control and Licensing Bylaw, Bylaw 13145;*
- (ii) *Business Licensing Bylaw, Bylaw 13138;* and
- (iii) *Vehicle for Hire Bylaw, Bylaw 14700;*

5 The Committee is delegated the powers, duties, and functions to hear and adjudicate Preliminary Issue Applications and appeals of:

- (a) Licensing Decisions;
- (b) MGA Orders; and
- (c) Weed Control Notices

10 (1) If the City Manager determines that a notice of appeal is sufficient, an interim stay on the Licensing Decision, Weed Control Notice, or MGA Order under appeal will automatically be granted until a final decision on the appeal is issued by the Committee.

14 (2) Subject to the Municipal Government Act, any other Act, or any other bylaw of Council, all appeals heard by the Committee will be hearings de novo.

16 (1) Nothing in this bylaw:

- (a) requires that any evidence or allegations of fact made to the Committee be made under oath; or
  - (b) requires the Committee to adhere to the Rules of Evidence applying to courts of criminal or civil jurisdiction.
- (2) Cross-examination of witnesses is not permitted.
  - (3) Despite (2), any Member may ask questions to any person giving evidence before the Committee.
  - (4) The Committee has the authority to determine the admissibility, relevance,

## Relevant Legislation

and weight of evidence given at a hearing.

### *BUSINESS LICENCE BYLAW 13138*

2 In this bylaw:

(a) “Business” means:

- (i) a commercial, merchandising or industrial activity or undertaking,
- (ii) a profession, trade, occupation, calling or employment, or
- (iii) an activity providing goods or services, as described in Schedule “A”, and whether or not for profit and however organized or formed, including a co-operative or association of Persons;

4 No Person shall engage in or operate a Business in the City unless the Person holds a Licence authorizing the Person to engage in or operate that Business.

### *VEHICLE FOR HIRE BYLAW 14700*

1(hh) “Vehicle for Hire” means a motor vehicle with a driver used or offered for the transportation of at least one passenger in return for a fee from any place within the City to a destination either within or outside of the City;

(ee) “Taxi Driver’s Licence” means a Class A or Class B Taxi Driver’s Licence issued pursuant to this bylaw;

4 (1) A person shall not operate, cause or permit the operation of a Vehicle for Hire unless it is a Taxi, Limited Taxi, Accessible Taxi, Limousine or Shuttle.

104 The City Manager may refuse to issue or renew a Licence, may suspend or cancel a Licence and may impose any conditions on a Licence for the following reasons:

- (a) the applicant or Licensee does not or no longer meets the requirements of this bylaw with respect to the Licence applied for or held;
- (b) the applicant or Licensee or any of its officers or employees:
  - (i) furnishes false information or misrepresents any fact or circumstance to a Peace Officer or the City Manager;
  - (ii) has, in the opinion of the City Manager based on reasonable grounds, contravened this bylaw whether or not the contravention

### Relevant Legislation

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- has been prosecuted;
- (iii) fails to pay a fine imposed by a court for a contravention of this bylaw;
- (iv) fails to pay any fee required by this bylaw; or
- (c) in the opinion of the City Manager based on reasonable grounds it is in the public interest to do so.

107 (1) A person:

- (a) who has been refused the issue or renewal of a Licence;
- (b) whose Licence has been suspended or cancelled; or
- (c) whose Licence is made subject to conditions, other than conditions imposed by this bylaw; may appeal the decision within fourteen days under the provisions of Bylaw 15166, the *Community Standards and License Appeal Committee Bylaw*.

### Reasons for Decision

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The submissions of Mr. Moreau focused on attempting to convince this Committee that it was not possible to implement a suspension of the licences until a Court decides whether to convict the Appellants on the bylaw violations. He mentioned the constitutional guarantee that a person is innocent until proven guilty and argued that until these gentlemen have their day in Court that a suspension is not possible since, he alleges, this Committee is not set up to hear witnesses and determine the validity of the accusations.

The standard of proof as it relates to a bylaw ticket is not the same standard of proof that is required of the CLO or this Committee. In order to be acquitted of a bylaw violation there must be a reasonable doubt as to whether the violation actually took place. In the one example cited by Mr. Moreau of a similar situation that went to Court, it appears that the Court must have been convinced that there was some doubt based on contradictory evidence.

In contrast, the suspension or revocation of a licence is based on reasonable grounds and is an administrative matter as outlined in the *Vehicle for Hire Bylaw*, and does not depend upon a prosecution of the offense. The same degree of proof required in a bylaw prosecution is not required by this Committee or the CLO to

## Reasons for Decision

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make a decision to suspend or revoke a licence. Instead the standard of proof would be based on whether there are reasonable grounds after weighing all the evidence and determining on a balance of probabilities whether it is more likely than not that the violations took place. However, it is also important to keep in mind that the decision to suspend or revoke a licence is a decision that is affecting the livelihood of an individual and therefore cannot be taken lightly.

In these cases the evidence that was before the CLO was evidence of a single occurrence where each individual was operating a vehicle for hire in violation of the provisions of the *Vehicle For Hire Bylaw*. In each case bylaw violation tickets were issued. Based on a single violation it appears that the CLO felt that a suspension of a Licence was warranted. The effect of the suspension would be to take away the ability of the individual to earn an income for an uncertain amount of time.

It is the decision of this Committee that one violation, in these circumstances, is not serious enough to warrant a suspension of the licence. There does not appear to be any surrounding circumstances that aggravate the situation. For example, there does not appear to be a continuing pattern of conduct. While the concerns of the CLO are warranted, and allowing unlicensed vehicles to provide services to the public does not meet the purpose of the current *Vehicle For Hire Bylaw*, it is difficult to rationalize how one violation can be enough to take away an individual's right to otherwise earn a living for an indefinite period of time.

The decision to suspend is further complicated by the fact that the suspension was to run until the final disposition of the violation tickets. There is nothing in the reasons of the CLO to suggest why he decided that this was an appropriate way to implement the suspension. This creates a situation where the length of each suspension will be directly dependent on how quickly these matters are heard in Court. One driver might face a longer suspension than another simply because a case did not get to trial as quickly. Why should two different people face the possibility of a different length of suspension when they committed the same bylaw violation? Why should each driver not have a clear indication as to the length of the suspension from the outset? These are questions that were not discussed in the reasoning of the CLO.

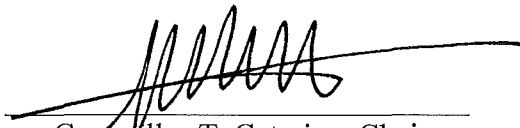
To be clear the decision of this Committee to cancel the decision of the CLO is not because we do not believe that each driver violated the *Vehicle For Hire Bylaw*. While there was no need to perform an extensive review of the evidence,

### Reasons for Decision

some evidence is found in the Record of the CLO to show that a violation took place. This case is further complicated by the fact there was no de facto Respondent. This means that the Committee is forced to rely on the Record and the CLO and the evidence found within that document.

The Appellant could have presented evidence to suggest that what was in the Record of the CLO was not accurate. In this case they chose not to do so and relied on the argument that all of the evidence needed to be tested in a Court of law. Section 10 of the *Community Standards and Licence Appeal Committee Bylaw* makes it clear that this is a hearing de novo and this Committee must consider all the evidence that is before it. Without some contrary version of events, this Committee is left with the version of events found within the Record of the CLO. We do not agree that this evidence needs to be proven in a Court and this Committee has the power to determine the reliability, nature and weight given to each piece of evidence as outlined in Section 16 of the *Community Standards and Licence Appeal Committee Bylaw*. At this point the weight of the evidence suggests that each of these drivers more likely than not breached the *Vehicle for Hire Bylaw* and the *Business Licence Bylaw*.

In summary, it is the opinion of this Committee that when a single violation takes place a suspension is not warranted if the effect would take away the right to earn a living for an indefinite period of time. Instead the punishment reflected in the ticketing of the offenders is sufficient. If there are other relevant factors to consider or a continuing pattern of conduct, those would be factors that would have to be taken into account on a case by case basis. In these cases no other factors appear relevant and the suspensions are too significant a penalty given the nature of the violations.

  
Councillor T. Caterina, Chair

oct 29/15  
Date