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MANITOBA PUBLIC UTILITIES BOARD

RE:

UNICITY/DUFFY'S SECOND MOTION
RE. PUB JURISDICTION

Before Board Panel:

Graham Lane	- Board Chairman
Monica Girouard	- Board Member
Susan Proven	- Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
April 29th, 2009

Pages 1 to 92

APPEARANCES

1
2 Walter Saranchuk, Q.C.) Board Counsel
3 Nicole Wray)
4
5 Paul Edwards) Avion Services Corp.
6 Shelley Tataryn)
7
8 Sidney Soronow) Unicity Taxi Ltd. and
9) Duffy's Taxi (1996) Ltd.
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1 --- Upon commencing at 10:02 a.m.

2

3 THE CHAIRPERSON: Okay, good morning,
4 everyone.

5 MR. SIDNEY SORONOW: Good morning.

6 THE CHAIRPERSON: We are here today to
7 hear oral argument of Unicity Duffy's motion to halt the
8 Avion proceeding on the basis that the Public Utility
9 Board lacks jurisdiction. Pre-hearing information and
10 positions have been received from Unicity/Duffy's and
11 also from Avion, and the Board has reviewed the material
12 carefully.

13 By way of introduction to today's Hearing,
14 the Board's understanding of the matter includes the
15 following:

16 1. The matter of PUB approval of Avion's
17 application to operate an Airport Shuttle service first
18 arose in January, 2007 when City Council passed a
19 resolution referring the City's agreement with Avion to
20 the Board for approval or denial pursuant to Section
21 163(3) of the City of Winnipeg Charter Act.

22 2. The Taxi Cab Board had earlier denied
23 a similar application by Avion for, as the Board
24 understands, the reason that a public need had not been
25 established. When Avion, thereafter, applied to the City

1 of Winnipeg for approval of the service, the Taxi Cab
2 Board approved that process and relinquished jurisdiction
3 on the basis that a fixed-fare transportation service was
4 involved.

5 3. The City's approval process apparently
6 involved five (5) public meetings, and it is the Board's
7 understanding that Unicity/Duffy's did not call the
8 City's jurisdiction into question during that time.

9 4. While the Airport Shuttle service
10 issue surfaced in 2007, Avion held its application to the
11 Board in abeyance until certain preliminary matters, such
12 as costs and plans for a public hearing, et cetera, were
13 given further consideration.

14 5. On May 30th, 2008, Avion apprised the
15 Board of its intention to recommence proceedings, and by
16 letters of June 25th, 2008 and on October 21st, 2008,
17 Avion filed documentation with the Board in support of
18 its application for approval of the agreement it entered
19 into with the City of Winnipeg for operation of the
20 Airport Shuttle service.

21 6. A Notice of Application was issued by
22 the Board on November the 5th, 2008 and published in the
23 newspapers.

24 7. Following publication of that Notice,
25 Unicity/Duffy's filed a preliminary objection with the

1 Board on November 17th, 2008 which was supplemented on
2 December 10th, 2008, stating that there was no agreement
3 as such between the City and Avion as is required under
4 Sub-section 163(3)(a) of the City of Winnipeg Charter
5 Act. The taxi companies maintain that such an agreement
6 was a fundamental precondition to the Board gaining
7 jurisdiction over the matter.

8 8. The Board heard Unicity/Duffy's motion
9 relative to the preliminary objection as part of the pre-
10 hearing conference that was held on January 19th, 2009,
11 and the Board's decision was included as part of Order 9
12 of '09 issued February 5th, 2009.

13 The Board held that city council's
14 resolution dated January 24th, 2007, was indicative of an
15 agreement between the City and Avion and that the City
16 had requested PUB approval of the agreement prior to its
17 execution.

18 The Board, therefore, found that an
19 agreement existed between the City and Avion and
20 accordingly the Board stated it is assuming jurisdiction
21 pursuant to Section 107 of the PUB Act which states in
22 part that the Board may perform duties assigned to it by
23 an Act of the Legislature.

24 10. The Board concluded that City
25 council's resolution was based on Section 163(3) of the

1 City of Winnipeg Charter Act which states in part:

2 "Where a person wishes to provide a
3 local transportation service the City
4 may enter into an agreement with that
5 person but before beginning to operate
6 the service approval of the agreement
7 must be obtained from the Public
8 Utilities Board."

9 Now, to the matter of the motion that is
10 now before us. As to Unicity/Duffy's position, as the
11 Board understands it from the filings that were made
12 prior to today, Unicity/Duffy's now bring this motion to
13 halt proceedings before the Board on the basis that the
14 City did not have exclusive authority over the proposed
15 vehicle service intended by Avion and the City,
16 therefore, did not have authority to enter into an
17 agreement with Avion.

18 The taxi companies state that,
19 accordingly, the Board does not have the jurisdiction
20 accorded to it under the City's legislation to deal with
21 Avion's jurisdiction.

22 Unicity/Duffy's position appears to hinge
23 on their interpretation of the City of Winnipeg Charter
24 Act, as well as of certain provisions of the Highway
25 Traffic Act, the Taxicab Act, and the regulations

1 thereunder.

2 The taxi companies submit that in order
3 for the Board to have jurisdiction the local
4 transportation service proposed to be provided by Avion
5 must be within the City's exclusive authority to operate
6 local fixed-fare passenger transportation services as
7 those words appear in Section 163 Subsection 1 of the
8 City's legislation.

9 Based on the taxi companies'
10 interpretation of the enactments mentioned, their
11 argument is that the City's authority does not extend to
12 taxicabs which they maintain include the vehicles to be
13 used by Avion and which require licences issued by the
14 Taxicab Board in order to be operated in Winnipeg.

15 In the end result, the Board understands
16 that Unicity/Duffy's contend that it is the Taxicab Board
17 that has jurisdiction over the vehicles and service
18 proposed by Avion and, therefore, the City does not have
19 exclusive authority over that transportation service so
20 as to enable it to enter into the agreement required by
21 Section 161 Subsection 3 of the City's legislation and
22 required to allow the Board to gain jurisdiction over the
23 matter.

24 As to the Board's understanding of Avion's
25 position, for its part, Avion maintains that the City did

1 taxicab's Board decision relinquishing jurisdiction or
2 the City's assumption of jurisdiction during any of the
3 numerous committee hearings before the City.

4 All of that said, I will now call on Mr.
5 Soronow to speak to his motion and following Mr.
6 Soronow's address I'll call on Mr. Edwards.

7 Mr. Soronow...?

8 MR. SIDNEY SORONOW: Thank you, Mr.
9 Chairman. At the outset might it be appropriate to have
10 our submission of March 18, 2009, marked as an exhibit to
11 these proceedings?

12 THE CHAIRPERSON: Yes.

13 MR. SIDNEY SORONOW: And ask that it be
14 so marked.

15

16 --- EXHIBIT NO. 1: Unicity/Duffy submission,
17 dated March 18, 2009

18

19 SUBMISSIONS BY MR. SIDNEY SORONOW:

20 MR. SIDNEY SORONOW: Mr. Chairman, this
21 Motion was filed on March 18, 2009, and it wasn't
22 actually till Friday afternoon -- Friday afternoon that I
23 had occasion to see a reply, marked April 24th, from
24 Avion.

25 So if I might, at the outset, just simply

1 indicate that it's not my intention to sit here and read
2 the submission which I made to this Board in support of
3 the Motion through my correspondence of March 18th. I
4 make the assumption that the Board has closely read the
5 contents of that letter and through the opening remarks
6 of the Chairperson it's obvious that it has been
7 reviewed. What I would prefer to do is use Mr. Edwards'
8 submission as a springboard to my comments.

9 I think that what must be most clearly
10 observed at the outset is that the major premise of our
11 submission is not disputed in Avion's reply. That major
12 premise is that the service contemplated to be provided
13 by Avion must fall, quote:

14 "...under the exclusive authority of
15 the City under Subsection 1."

16 That's a reference to Section 163.

17 As stated in our letter of March 18, 2009
18 it is in respect of that requirement and precondition
19 that the jurisdictional issue is focussed. Specifically
20 stated in order for the City to enter into any legally
21 valid agreement with Avion and in order for this Board to
22 have jurisdiction, the local transportation service must
23 be one within the exclusive authority of the City under
24 Subsection 1.

25 And what that means is that if for some

1 reason and I -- I don't believe there's a joint authority
2 here, but even if you were to find that there was some
3 level of joint authority between the City and the Taxi
4 Cab Board that would not be sufficient. It must be the
5 case that the matter falls foursquare solely in the
6 exclusive authority of the City, to give rise to the
7 provisions of Section 163, to give rise to the ability of
8 the City to enter into a valid agreement and for this
9 Board to have jurisdiction.

10 So I start from the stepping stone that
11 Avion takes no issue with this proposition. Accordingly,
12 if you conclude that the proposed service falls outside
13 of the exclusive authority of the City of Winnipeg or
14 falls within some joint authority, the requirement under
15 Section 163 will not have been met and this Board will
16 have no jurisdiction.

17 What can also be stated unequivocally and
18 is beyond dispute, even by reference to the reply of Mr.
19 Edwards, is that the City has no exclusive authority if
20 the vehicle or service involved is a taxicab, as that is
21 a specific exception to the City's exclusive authority in
22 163(1). And I invite you to, again at your leisure,
23 review 163 sub 1 which starts with the preamble:

24 "The City has exclusive authority to
25 operate local fixed fare passenger

1 transportation services within the City
2 except..."

3 And then sub (b) references taxicabs as
4 those and -- and school buses, as those expressions are
5 defined in the Highway Traffic Act.

6 Again, Avion does not dispute that. So
7 that if the vehicle in question or the service --
8 whatever way you wish to phrase it -- is a taxicab within
9 the meaning of the relevant legislation then it's an
10 exclusion to the exclusive authority and the City,
11 therefore, having no exclusive authority, can't enter
12 into an agreement and this Board has no jurisdiction.

13 So the question then becomes -- the
14 question we ask ourselves, you will be asking yourselves
15 is what, then, is a taxicab?

16 The operative words, and -- and hopefully,
17 because I cited reference to the operative words and --
18 and you have access to the statutes and I referenced them
19 both in the Highway Traffic Act and in the Taxicab
20 Legislation -- the operative words in both the Highway
21 Traffic Act and the Taxicab Act are virtually identical
22 in defining a taxicab.

23 And how do they define it?

24 "As any motor vehicle had, kept,
25 garaged, under repair, used or intended

1 for use or operated for the
2 transportation of person for
3 compensation."

4 And the exception being:

5 "Except for any motor vehicle or class
6 of motor vehicles that the Taxicab
7 Board may exempt from the definition."

8 The Taxicab Board is given global and
9 comprehensive jurisdiction under the Taxicab Act in
10 respect of taxicabs, including the authority of the
11 licence or not licence any particular vehicles or
12 service.

13 Now, let us, for a moment, consider the
14 proposed service by Avion by reference to the virtually
15 identical definition of "taxicab" in the two (2) relevant
16 pieces of legislation; namely, the Highway Traffic Act
17 and the Taxicab Act.

18 Avion proposes to utilize one (1) or more
19 vehicles for the use or intended use or operation of
20 transportation of persons for compensation.

21 Accordingly, it's my submission to this
22 Board that the Legislature has made it abundantly clear
23 that the vehicles being operated by Avion are taxicabs.
24 They are taxicabs for the purposes of the Highway Traffic
25 Act, and they are taxicabs for the purposes of the

- 1 capacity of seven (7) or more persons
2 including the driver that:
- 3 1. Is not equipped with a wheelchair
4 ramp or lift or both and is not -- and
5 is not used for the transportation of
6 disabled persons;
 - 7 2. Is operated under a written
8 contract providing for the exclusive
9 use of the vehicle to a person for a
10 term not less than twelve (12) months,
11 and;
 - 12 3. Displays a sign painted on the
13 vehicle specifying the name of the
14 person to whom exclusive use of the
15 vehicle has been provided under the
16 contract."

17 So let's try to analyse each of those
18 subpara -- or subparagraphs but the -- the opening part
19 of 2(b):

20 "A motor vehicle with a seating
21 capacity of seven (7) or more persons
22 including the driver."

23 The Avion shuttle bus has a seating
24 capacity of more than seven (7) persons including the
25 driver, so it is obvious as to that criteria that their

1 vehicle is:

2 "A motor vehicle with a seating
3 capacity of seven (7) or more persons
4 including the driver."

5 And the next consideration is subparagraph
6 1 which references the transportation of disabled
7 persons.

8 So I looked simply at two (2) things to
9 start with. There is the business plan that forms part
10 of this Application, and that's the one that in the left-
11 hand corner, bottom corner of each page, says May -- I
12 think it's May 29th, 2008. And then attached to Mr.
13 Edwards' submission at Tab 6 was some earlier version of
14 the CityConnect business plan, and that one is dated
15 February 13, 2006, in the lower left corner of each page.

16 I must tell you this is the first time I
17 have seen the one attached here. The one that was
18 delivered as -- by Mr. Edwards' office as part of the
19 package -- or the package that represented the
20 Application to the Public Utilities Board included the
21 business plan only that bears the date May -- I think
22 it's 29th, 2008, at the bottom of the lefthand corner.

23 Now admittedly both are mostly similar.
24 But for the purposes of this presentation I thought it
25 helpful to, perhaps, where relevant, refer, since the

1 Board now has not only the Application, one (1), the
2 business plan of -- of May '08, but has now this one of
3 '06, where necessary or relevant to reference both.

4 And if you looked at page 7, and I don't
5 know if you have those booklets in front of you. It's
6 his submission of April 24th, Tab 6. If you look at page
7 7, and -- and if you don't have that one, but you only
8 have the application one which is of May '09, oddly
9 enough it happens to appear on exactly page 7.

10 So, whether you're on page 7 of, I'll call
11 them, the "'06 Business Plan" or page 7 of the '08, the
12 same exact terminology appears in both of them. It
13 appears under heading "Passengers With Disabilities."
14 And, just for the record, I will read it:

15 "Avion is committed to providing
16 exceptional guest services for our
17 customers with disabilities, including
18 those who use wheelchairs. We are,
19 therefore, committed to the following
20 principles:

- 21 1. Customers with disabilities are
22 entitled to the full and equal
23 enjoyment of the transportation
24 services provided by CityConnect.
- 25 2. All customers will be provided with

1 quality service, regardless of whether
2 they are disabled or not.

3 3. Customers requiring the use of
4 accessible transportation are
5 encouraged to make reservations for
6 trips at least two (2) hours in advance
7 and to specify the need for accessible
8 transportation. As to such
9 reservations, CityConnect will use its
10 best efforts to fulfill such
11 reservations within fifteen (15)
12 minutes of the requested pick-up time.

13 4. All potential customers enquiring
14 into transportation services with
15 CityConnect, whether by telephone or
16 through the Internet, will be informed
17 of the existence of accessible
18 transportation.

19 5. All CityConnect drivers will be
20 trained in the used of securement
21 systems, ramps and lifts, and will be
22 available to assist customers with
23 disabilities as requested in entering
24 and exiting accessible vehicles."

25 I should also indicate to you that in the

1 '06 business plan, they specifically describe the fact
2 that vehicle equipped with wheelchair accessible options.

3 If you were to look at the '08 plan, and
4 to page 9 of that, you will see that Avion, again, says
5 that CityConnect drivers will be trained in the use of
6 securement systems, ramps and lifts and will assist
7 customers with disabilities. Now, clearly, there would
8 be no need for their drivers to be trained in the use of
9 securement systems, ramps and lifts, as required by D-
10 409, to assist customers with disabilities if Avion's
11 Business Plan excluded the transportation of disabled
12 persons.

13 I pause here to simply say it would be, I
14 suggest, totally untenable if Avion even proposed a
15 transportation service of this kind that didn't include
16 the disabled. I would suspect that they would have more
17 than their share of grief from the Human Rights
18 Commission. But more than that, this proceeding would be
19 bombarded, and fairly bombarded, by the disabled groups
20 had it been the case that Avion was proposing a shuttle
21 service that was not inclusive of the ability for
22 transportation of disabled.

23 I would think that if they think -- if
24 Avion thinks that Unicity and Duffy's is presenting them
25 with a headache, surely, they would find out what a

1 The reference to "best efforts" is a best efforts to meet
2 a fifteen (15) minute timeline; it's not a best efforts
3 to actually supply transportation to the disabled. No,
4 that's part of their plan, that's part of their
5 commitment so don't be fooled because he puts it on some
6 footing that suggests somehow, well, we'll do our best
7 efforts.

8 In fact, their whole underpinning to their
9 program quite clearly states the intention that the
10 service is to be available and serve the needs of the
11 disabled community.

12 Then, because that's not going to fly, Mr.
13 Edwards suggests that, quote:

14 "The transportation of disabled
15 persons would be on an occasional, as-
16 needed basis only." End of quote.

17 What is that? Again, that's an
18 acknowledgement that Avion motor vehicles will be used
19 for the transportation of disabled persons. The
20 frequency with which that happens is irrelevant. The
21 service intended by Avion includes the transportation of
22 disabled persons and no matter what verbal gymnastics My
23 Friend tries to engage in in his submission nothing can
24 take away from the pure, clear statements in the business
25 plan about the transportation of the disabled.

1 So the moment you come to that
2 realization, Avion cannot satisfy subparagraph 1 of the
3 exemption contained in 2(b) of the taxicab regulations.
4 Then I turn to his treatment or comments relative to
5 subparagraph 2 of the exemption.

6 What does Sub 2 say? It says -- again, we
7 go back to the beginning:

8 "A motor vehicle with a seating
9 capacity of seven (7) or more persons
10 including the driver that is operated
11 under a written contract providing for
12 the exclusive use of the vehicle to a
13 person for a term of not less than
14 twelve (12) months."

15 Frankly stated, that provision has
16 absolutely nothing to do with a situation such as Avion.
17 What this is referring to is a situation where the owner
18 and operator of a vehicle contracts to provide exclusive
19 use of that vehicle to a third party for a term of not
20 less than twelve (12) months.

21 An example: And owner and operator of a
22 bus/van-type vehicle contracts or will contract with a
23 facility such as the Portsmouth Senior Home and the bus
24 or van will be used exclusively by the Portsmouth Senior
25 Home to transport its residents to medical appointments

1 and for other offsite services or activities. Such bus
2 or van -- and I've seen them on the street will be
3 identified by signage referring to the Portsmouth
4 facility and those using that Portsmouth bus or van will
5 not tender any payment to the owner or operator of the
6 van or bus for the trip.

7 In short, it's talking about that
8 situation where an owner and operator of the vehicle
9 contracts with a third party to provide exclusive use to
10 that third party.

11 In this instance Avion is the owner and
12 operator of the proposed shuttle. It is not contracting
13 with a third party for the exclusive use of that vehicle
14 by a third party. Rather, Avion is simply intending to
15 utilize its motor vehicles for the transportation of the
16 public at large for compensation. In fact that's what
17 Unicity, who has the contract at the airport contracts
18 with WAA, the Winnipeg Airports Authority, to provide
19 taxi services to the public at large at the airport.

20 But they're governed under the Taxi Board
21 Act. Why are they? Because it's a motor vehicle used
22 for the transportation of persons for compensation.

23 Subparagraph 3 of 2 Sub (b) displays a
24 sign painted on the vehicle specifying the name of the
25 person to whom exclusive use of the vehicle has been

1 provided under the contract. Well, that's like the bus
2 that says Portsmouth Senior's Home. It's used
3 exclusively by the Portsmouth Senior's Home. Some
4 contractor has contracted with the Portsmouth facility.

5 But that's not the Avion situation.
6 Having the name CityConnect on their bus or vehicle
7 doesn't bring them within the ambit of 2(b). Avion
8 service doesn't involve exclusive use; it involves the
9 public at large just as Unicity's service out at the
10 airport does.

11 So my submission to you, Mr. Chairman and
12 Members of the Board, is that it should be obvious to
13 you, I think hopefully ultimately to Avion, that they are
14 not able to meet any of the subparagraphs that relate to
15 an exemption under subparagraph 2(b) of the taxicab
16 regulations. I suggest to you not only can they not meet
17 the three (3), they can't meet any. As no -- as I said
18 before, Section 2(b) of the regulations is the only
19 section, the only regulation, that provides, as its
20 preamble says:

21 "An exemption to the definition of
22 taxicab."

23 So when we conclude -- and again, unless
24 My Friend in his argument now tries to shoehorn himself
25 into some other exemption, I'm not going to address the

1 other exemptions because A) I don't think they're
2 applicable, B) he hasn't suggested that they are
3 applicable. So once you get to the point where you
4 recognize that the exemptions don't apply, you have to
5 look only at the definition of taxicab as contained in
6 the legislation.

7 What is the fact? The fact is Avion
8 intends to use or operate its motor vehicle for the
9 transportation of persons for compensation in the City of
10 Winnipeg. That's it. That encompasses the whole of the
11 definition of taxicab. If it meets that definition, it's
12 a taxicab. The only possibility is if it fits in the
13 exemption, which I said it didn't.

14 So then, I think, faced with the
15 conundrum, that he is foursquare, Avion is foursquare
16 within the definition of taxicab, contained in either or
17 both of the Taxicab Act and the Highway Traffic Act, Mr.
18 Edwards then tries a Houdini exercise in escapism by
19 trying to somehow befuddle the whole process with some
20 references to the regulations. Essentially, Mr. Edwards'
21 analysis of the regulations seem to lead him to con -- to
22 a conclusion that the Taxicab Board only regulates
23 metered taxicabs.

24 In fact, as the Chairman recited his or
25 the Board's understanding of Mr. Edwards' submission,

1 that was one (1) of the points, essentially. That's an
2 erroneous conclusion. Just take a simple example.
3 Limousines are governed by the Taxicab Board. They fall
4 under the definition of "taxicabs." Well, why? Because
5 they are a vehicle transporting persons for compensation,
6 and under the Taxicab Act, in the City of Winnipeg.

7 But they have no meter. Limousines don't
8 have a meter. Their licensing and their rate structure
9 are, and everything about them is, governed under the
10 Taxicab Act. So how does one come to some conclusion, as
11 Mr. Edwards appears to, to try and exercise the Houdini
12 escapism, how does one come to a conclusion that the
13 Taxicab Board deals only with and controls and has
14 authority only in respect of metered vehicles? It's not
15 true under the Regulations. It's not true in fact or in
16 the real world.

17 As I said, it's the transportation of
18 people for compensation; that's what the Legislation
19 says. So, whether that compensation is measured by a
20 meter, which, admittedly, there are some vehicles that
21 are required under the Taxicab Act to have meters.
22 Others are not.

23 Where they are not, the measure of their
24 compensation is dictated by the Taxicab Board, but not by
25 reference to a meter which measures time and distance;

1 rather, by whatever it is that the Taxi Board decides
2 ought to be the appropriate compensation for the service
3 being offered to the public.

4 The Board -- the Taxicab Board -- oversees
5 licences, the compensation structure as part of its
6 jurisdictional mandate.

7 So, when My Friend says that, Well, you
8 know, this isn't a metered taxicab, it's a fixed fare,
9 he's really trying to mislead you as to the jurisdiction
10 of the Taxicab Board Act. But not only as to the
11 jurisdiction of the Taxicab Board Act, but as to the
12 definition of a taxicab. It's the transportation of
13 persons for compensation, whether that's by meter -- some
14 vehicles are, limousines are not -- a structure is
15 created by the Taxicab Board.

16 So, as to this idea that the Taxicab Board
17 has authority over metered taxicabs, frankly, it's simply
18 a non-starter. Actually, the Avion vehicles are taxicabs
19 to the same extent as are limousines. They are used for
20 the transportation of -- of persons for compensation in
21 Winnipeg. That, Mr. Chairman, alone, brings such
22 vehicles into the definition of taxicabs, short of there
23 being an applicable exemption under 2(b).

24 And, as I have taken you through 2(b)(2) -
25 - sorry -- 2(b), which is the one that My Friend puts

1 forward as being applicable, and I think and I hope that
2 my submissions have shown you that it is not applicable.

3 Mr. Edwards also tries to apply an
4 interpretation to the regulations in a way that is
5 torturous in its logic in an effort to take Avion outside
6 of the Taxicab Board's jurisdiction. He seems to be
7 trying to say to you that Avion vehicles only seat nine
8 (9) passengers plus a driver.

9 Mr. Chairman, I -- I pause here to
10 question how My Friend says that when -- and by the way,
11 I don't think anything ultimately turns on it anyways,
12 but from a factual perspective if you look at page 1 --
13 it's called 1 of 12, in his application materials, this
14 is the business plan of May 2008, it says in the third
15 paragraph:

16 "The shuttle vehicles will be able to
17 accommodate up to fifteen (15)
18 passengers per trip."

19 So first, off from a factual perspective,
20 his tortuous reasoning doesn't even get started out of
21 the starting blocks; it's factually incorrect.

22 Secondly, Mr. Edwards ignores the
23 definitions in both the Highway Traffic Act and the Taxi
24 Board Act which result in Avion's vehicles falling within
25 the definition of taxicab.

1 Remember one (1) thing, Mr. Chairman and
2 Members of the Board, jurisdiction is determined by
3 reference to the legislation, not the regulations. The
4 only reason the regulations come into play at all in this
5 instance is because the legislation has said that the
6 taxicab board can provide for an exemption. Absent that,
7 you wouldn't even be looking at the regulations at all.
8 Absent the fact that he's trying to pigeon hole himself
9 into one (1) of these exemptions we wouldn't be looking
10 at it at all. So jurisdiction is determined by
11 legislation passed by the Legislature on Broadway, not by
12 regulations.

13 Thirdly, even if Avion's vehicles had a
14 seating for nine (9) passengers plus a driver rather than
15 the first fifteen (15) persons referred to in their
16 business plan, which is part of their Application, a nine
17 (9) passenger vehicle is contemplated even under the
18 regulations. Indeed, if you look at the very regulation
19 that they're trying to use as an exemption, that is 2(b),
20 starts:

21 "A motor vehicle with a seating
22 capacity of seven (7) or more persons
23 including the driver that..."

24 And so it's obvious that from that that
25 the taxicab board sees that vehicles of seven (7), eight

1 (8), nine (9), ten (10), eleven (11), twelve (12),
2 thirteen (13), are part of their jurisdiction, are
3 otherwise a taxicab but they're giving a narrow
4 exemption. So it's obvious that even a nine (9)
5 passenger vehicle is contemplated to be a taxicab unless
6 the subparagraphs, which I earlier reviewed, exempt that
7 vehicle from the definition of taxicab.

8 Mr. Chairman and Members of the Board, the
9 interpretation issue which we face today is simply not
10 rocket science. Avion's fifteen (15) passenger vehicles
11 are taxicabs; they are intended for use for
12 transportation of persons for compensation in Winnipeg.
13 They are taxicabs. Not taxicabs in the generic sense
14 that, you know, we walk out on the street and we see a
15 Unicity taxicab go by or a Duffy's taxicab, after all
16 they -- Unicity and Duffy's comprise 90 percent of the
17 industry in -- in -- taxicab industry in Winnipeg in the
18 metered area of the taxicab industry.

19 So we have a tendency to kind of just see
20 those ones with a light on top and -- and think well,
21 those are taxicabs. Yes, they are, but the taxicab
22 defined by the legislation is a broader category than
23 that.

24 So, once you come to that recognition that
25 the vehicles in service are within that definition in

1 both the Highway Traffic Act and the Taxi Board Act, and
2 that no exclusion applies -- or exemption, I should say
3 is the word used. Once they are taxicabs, they are
4 expressly and specifically excluded from the exclusive
5 authority of the City of Winnipeg under Section 163(1).

6 Well, if they don't fall in the exclusive
7 authority, the whole concept of the City entering into
8 agreements falls apart. Because in order for the City of
9 Winnipeg to enter into a valid agreement, and in order
10 for this Board to have jurisdiction, the proposed service
11 and vehicles must fall under the exclusive authority of
12 the City of Winnipeg.

13 It's my submission to you, Mr. Chairman
14 and members of the Board, that it ought to be abundantly
15 clear that the City of Winnipeg does not have exclusive
16 authority over the intended Avion service.

17 The legislation, moreover, has not granted
18 the authority to the City to enter into the contemplated
19 agreement with Avion. Clearly, therefore, the Board
20 cannot have jurisdiction to deal with the matter under
21 Section 163(3) since the City doesn't have exclusive
22 jurisdiction in respect of the proposed transportation
23 service.

24 Mr. Chairman, I -- I could content myself
25 with the remarks that I've made so far, but I feel that I

1 would be remiss if I didn't make at least a brief comment
2 in respect of the third and fourth parts of Mr. Edwards'
3 submission.

4 In the third part of Mr. Edmond's (sic)
5 reply submission, he suggest -- suggests that, quote:

6 "The decision of the Taxicab Board with
7 respect to its lack of jurisdiction is
8 entitled to deference." End of quote.

9 From the Public Utilities Board.

10 To put it mildly, Mr. Chairman, Mr.
11 Edwards' submission on this issue is without merit.
12 Firstly, it should be noted that there has been no
13 Hearing before the Taxi Board where relevant parties have
14 prevent -- presented evidence and/or argument on
15 jurisdictional issue relating to the Avion's intended
16 service.

17 Consequently, the Taxicab Board has never
18 issued an order or decision touching on the subject. And
19 in the absence of an order or decision, there has been no
20 occasion where a third party would have the right to
21 appeal to the Court of Appeal as is similarly provided in
22 the Taxicab Board, just as your Board has provision for
23 an appeal to the Court of Appeal. But the fact is, the
24 Taxicab Board has never made an order or decision.
25 There's never been a Hearing, so if there's no order,

1 there is no ability for anyone to have ever gone to the
2 Court of Appeal.

3 But what is crucial to recognize in all of
4 this is that Avion, itself, recognized its need to obtain
5 licence authority from the Taxicab Board and, to that
6 end, on February 13, 2006, Avion applied to the Taxicab
7 Board.

8 That application resulted in a denial of
9 licence authority, and that denial, in fact, as I think
10 the Board already recognized, was not on the basis of a
11 lack of jurisdiction, but rather, the Taxicab Board heard
12 the application on its merits -- or should I say, lack of
13 merits -- but, in any event, on its merits and dismissed
14 it. Dismissed it. It exercised its jurisdiction. Avion
15 knew at that juncture they had to go there. They went
16 there; they failed.

17 References made in Mr. Edwards' submission
18 to a letter of November 22nd, 2006, and then to a comment
19 in the Taxicab Board's response to the Information
20 Request through its letter of March 18th, 2009, and I
21 noted that the Chairperson in his opening comments used
22 the term:

23 "The Board relinquished jurisdiction on
24 the basis that it is a fixed fare
25 service."

1 I don't read anything that says either A)
2 they relinquished jurisdiction or B) that had anything to
3 do with a fixed fare service.

4 What we have to recognize is that the
5 Taxicab Board is a statutory tribunal. They deal with
6 matters that come before them by way of application, or,
7 if necessary, if someone is to operate a vehicle to
8 transport people for compensation in the City without
9 getting licensing they would presumably approach it from
10 the enforcement side of their jurisdiction. But an
11 application was made to them. They heard it on the
12 merits; they dismissed it. The Board at that point is
13 functus, they're not involved anymore.

14 Even if one looks at what the Board said
15 is -- essentially what they were saying is, we don't
16 exercise regulatory authority over a proposed contract
17 between Avion and the City of Winnipeg. Probably a true
18 statement. Their involvement is not contracts. Their
19 involvement is in relation to a service of vehicles in
20 service to be conducted by those vehicles.

21 So the mere fact they wrote a letter that
22 was not the product of a Hearing, never did anyone have
23 the opportunity to question it, challenge it, deal with
24 it in the courts, a letter that appears to have been
25 taken to mean something more. Because even the Taxicab

1 Board, even if they -- to use your words "relinquish
2 jurisdiction," they can't. A -- a Board cannot
3 relinquish a jurisdiction that the legislature reposes in
4 them. In fact, if they did that somebody is going to
5 take an application for a mandamus to compel them to deal
6 with it.

7 So they're -- you know, I -- I -- I say
8 this because I heard the Chairman's comments and I want
9 to take issue with that. I don't view anything that
10 happened as a relinquishing of a jurisdiction. They had
11 a Hearing and as the Chairman -- sorry, the secretary
12 kind of said in the response to the Information Request:
13 We're assuming this is the same application that came
14 before us. It came before us, we dismissed it. You
15 know, if they got a different application, well, maybe
16 we'll just have to exercise our jurisdiction.

17 But how do Boards act? They act because
18 someone applies. Avion applied, they got dismissed, the
19 Board is functus. The Board has nothing more to do. How
20 it would come up again of course, is if Avion, or anyone
21 else in this city, were to be engaging themselves in the
22 transportation of persons for compensation and not have
23 an applicable exclusion under 2(b) and be running around
24 this City trying to pretend the Taxicab Board doesn't
25 exist, in which case it would be open to the Taxicab

1 Board to use their enforcement facilities to bring that
2 party before the Board. Normally it comes before the
3 Board because you made an application; that's exactly
4 what Avion did.

5 So if Avion has now changed -- and I'm not
6 sure. I mean, I guess, to some extent, it kind of looks
7 like there are some few differences between -- I'm not --
8 you know, I'm not specifically certain what was the whole
9 of the content of the Application that went before the
10 Taxicab Board. I assume it was kind of premised upon
11 this 2006 business plan. We certainly have attached to
12 our March 18th submission a copy of what's called the
13 Summary Information; that's what the Taxicab Board
14 prepares as the public part of the information given out
15 concerning a specific application and as -- I think it's
16 Appendix 4 we have their decision.

17 So -- but if -- if that application is a
18 little bit different now, well, then they should be back
19 at the Taxicab Board to make an application. They knew
20 before that was the place to go; they should know that
21 now.

22 I want to deal and make a few comments on
23 this issue of what he calls the 'concept of deference'.
24 So he's saying you should have deference to the Board.
25 Well, there's no decision of the Board. There's no Order

1 of the Board. There's no opportunity to challenge
2 anything. They were functus as it relates to Avion but
3 he says you should have deference.

4 There is, Mr. Chairman and members of the
5 Board, no concept of deference in relation to the
6 jurisdiction of a statutory tribunal. The concept of
7 deference is a concept utilized by the courts where they
8 talk about the notion that there are all these statutory
9 tribunals, they have a particular expertise in an area,
10 and as long as they act -- the tribunal acts within its
11 jurisdiction, there's a whole body of law the extent to
12 which we should exercise curial deference, curial meaning
13 court deference.

14 And part of that springs from the notion
15 or the oft-used saying, you know, that a Board has the
16 right to be wrong as long as it acts within its
17 jurisdiction. And I don't want to get into an academic
18 exercise of trying to explain all of that and you might
19 be well familiar but it is a -- you know, it's a
20 difficult area of law.

21 But one (1) area where a statutory
22 tribunal cannot be wrong, and has no right to be wrong,
23 is the limits of its own jurisdiction. You can't assume
24 a jurisdiction you don't have. The Taxicab Board can't -
25 - never refuse a jurisdiction it has. I mean, on

1 jurisdictional issues there's simply no right to be wrong
2 so because there's no right to be wrong, there's no
3 concept of deference at all applicable to issues that
4 pertain to jurisdiction.

5 At the end of the day, an administrative
6 tribunal either has or does not have jurisdiction in
7 respect of a particular matter. Whether there is
8 jurisdiction in a particular situation depends on --
9 sorry, does not depend on whether either or both of the
10 parties to the proceeding believe there is or is not
11 jurisdiction.

12 The jurisdiction of a statutory tribunal
13 turns on the circumstances and the language of the
14 legislation, not the opinions of parties to a proceeding.
15 And ultimately, where there is a lingering dispute, a
16 case may be referred to the applicable court to outline
17 or to determine the limits of that statutory tribunal's
18 jurisdiction.

19 So these comments were intended to respond
20 to this idea that there should be deference. There's --
21 there's no room for the concept of deference on these
22 jurisdictional issues and moreover, I don't know what
23 they're deferring -- what deference you're giving --
24 would be asked to give to what. There's never been
25 anything by the Taxicab Board other than that they

1 dismissed these folks' application.

2 Now, there is -- and -- and it was
3 mentioned by the Chairperson -- Mr. Chairman, I'm -- you
4 know, I won't lose the thread of my thought. I know most
5 tribunals take a morning break, and I may be a bit more,
6 so, you know, I'm inviting the Chairperson that if he'd
7 like to take a break now, that's fine. If you'd like me
8 to carry on, that's fine, too. I won't lose my thread or
9 energy by taking a break.

10 THE CHAIRPERSON: How much longer do you
11 think you will be?

12 MR. SIDNEY SORONOW: I'm always hesitant
13 to say that. And particularly because the tribunal,
14 itself, may have questions and I -- that's an area where
15 I'd prefer not to be interrupted by a break on, so...

16 THE CHAIRPERSON: Okay, we will take five
17 (5) minutes right now. Thanks.

18

19 --- Upon recessing at 11:05 a.m.

20 --- Upon resuming at 11:14 a.m.

21

22 THE CHAIRPERSON: Okay, Mr. Soronow, do
23 you want to continue where you left off?

24

25 CONTINUED BY MR. SIDNEY SORONOW:

1 MR. SIDNEY SORONOW: Thanks. Mr.
2 Chairman, continuing in my remarks, one (1) of the
3 comments that you made, Mr. Chairman, was about the fact
4 that there had been several different occasions for
5 representations to be made at the City of Winnipeg, and I
6 think you said, Five (5).

7 I don't know, because I was not involved
8 in this matter at that juncture, so whether it's five
9 (5), it's four (4), it's three (3). But, undoubtedly,
10 there was occasions where this matter was considered by
11 policy committees of the City of Winnipeg. Appreciate
12 these are not judicial or administrative tribunals, they
13 are just committees of the City of Winnipeg.

14 And much seems to -- Mr. Edwards seems to
15 try to make much of the fact that, during that process,
16 the jurisdictional issue that I'm raising here today and
17 through my motion of March 18th, didn't surface.

18 I don't believe, Mr. Chairman, that in
19 appearing here today, I need comment on or defend any
20 inadequacies of prior legal counsel who acted for Unicity
21 and Duffy's or any failure on their part, during the
22 process of the City committee hearings, to raise the
23 jurisdictional issue.

24 It's unfortunate, I'll give you that,
25 because had it been raised at that juncture, I believe,

1 based on the submissions that I've made here today, the
2 City, itself, would have recognized that it ought not to
3 go any further with the matter since it didn't have the
4 exclusive authority. So that's unfortunate, but that
5 occurrence of appearances before that -- those committees
6 does not dictate a result when we are now under a
7 microscope having to examine what really are the
8 jurisdictional factors and issues.

9 And I should tell you, by the way, for
10 what it is worth, that I'm told by Joan Wilson, the lady
11 sitting to my right here, who is general manager of
12 Duffy's, that, as noted, she did attend all or some of
13 those meetings. And she indicates to me that
14 continuously she kept saying to the City, This is a
15 matter that should be at the Taxicab Board. Admittedly,
16 not being a lawyer, perhaps she didn't frame it to
17 isolate the jurisdictional -- precise jurisdictional
18 issue, but she certainly took the position that it was in
19 the wrong forum. The proper forum is the Taxicab Board.

20 Then My Friend takes kicks at Unicity and
21 Duffy's because he says, Well, you know, look, you know,
22 a couple of years have gone by, this thing's been in the
23 paper, the Board advertised it and -- and who are the
24 opponents? You know, the only people who have come
25 forward are Unicity and Duffy's.

1 I pause to note that if he wished to start
2 a service that didn't include the disabled he'd have more
3 than enough opponents to meet his liking at -- at
4 Hearings.

5 But that having been said, I want you to
6 appreciate Mr. Chairman, that Unicity and Duffy's
7 constitute as I said 90 percent of the metered taxicab
8 industry in Winnipeg and it is understandable therefore
9 that they would vigorously oppose Avion's application
10 since it effects their financial viability and indeed the
11 livelihoods of many hundreds of taxicab owners as well as
12 the people who drive for them.

13 Surely, we wouldn't expect to see at this
14 Hearing the gentleman who owns the vehicle that's leased
15 exclusively to the Portsmouth. It's not going to happen.
16 Any impact on him whatsoever and so who are the natural
17 opponents to this are in fact Unicity and Duffy's. And
18 at the end of the day whether they are the only parties
19 who oppose Avion does not diminish their entitlement to
20 ensure that the jurisdictional limits are recognized and
21 respected.

22 To characterize this vigilance on the part
23 of Unicity and Duffy's as spurious or vexatious shows a
24 regrettable misunderstanding of administrative law. It
25 is necessary that statutory tribunals recognize the

1 limits of their jurisdiction and they are not entitled
2 under any circumstances to assume jurisdiction which has
3 not been legislatively reposed in them.

4 Earlier in your remarks, Mr. Chairman, you
5 referred to, I believe it was Section 107 and I'll admit
6 not being fully conversant -- as fully conversant in your
7 legislation as your counsel would be or as you would be.
8 However, I note it's where its legislatively referred to
9 you and you have to meet those requirements of the
10 legislation. Well, in this instance, it is that 163-1
11 that is the starting point.

12 And as I have said to you, Avion cannot
13 move this matter forward since the City of Winnipeg
14 doesn't have exclusive authority therefore you have no
15 authority. What I noted -- just to backtrack for a
16 moment, this notion that it is vexatious, you know, the
17 whole interesting thing of it is, is that Avion started
18 this Application then stopped it for I don't know, a
19 couple of years.

20 Then reinitiated it and then in prior
21 proceedings said this is frivolous and vexatious that
22 you're opposing, you know, you stalled out the process
23 when, in fact, if -- and added to the cost when, in fact,
24 it was they who sat on it for a couple of years. This
25 issue could have been addressed as the jurisdiction a

1 couple of years ago had they not decided to pull back
2 their Application.

3 My Friend and Avion appear to love these
4 words frivolous and vexatious. I only say that by
5 reference to the frequency with which they use it to try
6 to characterize another party. Please don't be fooled by
7 the repetition of those phrases as they are an inaccurate
8 depiction of the process and certainly are irrelevant
9 when we are talking about jurisdiction.

10 There is either jurisdiction or there is
11 not and whether a party even was frivolous in the way
12 they were trying to approach it wouldn't make a
13 difference. At the end of the day, jurisdiction either
14 exists or it doesn't.

15 Now, I thought it was interesting, and I
16 invite you to look at page 15 of Mr. Edwards' submission
17 -- and let me just for a moment...

18

19 (BRIEF PAUSE)

20

21 MR. SIDNEY SORONOW: He references there
22 and states that the Taxicab Board Act and Regulations
23 evidence a clear legislative intent to empower the
24 Taxicab Board to govern all aspects of the taxicab
25 industry. That statement I agree with.

1 There is a very broad legislative intent
2 by the Legislature through the passage of the Highway
3 Traffic Act and the passage of the High -- of the Taxi
4 Board Act -- Cab Act -- to encompass and enshrine in the
5 jurisdiction of the Taxicab Board any motor vehicle used
6 for the transportation of persons for compensation.

7 And I ask you that when you sit back, when
8 you ultimately adjourn from this Hearing, to ask yourself
9 but one (1) very simple question: Does Avion intend to
10 use or operate its motor vehicles for the transportation
11 of persons for compensation? Just ask yourself that
12 simple question. It's not rocket science.

13 The answer is not one in doubt; the answer
14 is in the affirmative. Yes, that's exactly what they
15 intend to do and then review the legislation as to the
16 definition of taxicab in both relevant pieces of
17 legislation -- the Highway Traffic Act and the Taxicab
18 Board Act, and you will say one (1) thing only to
19 yourself -- it's a taxicab, not the metered kind that run
20 around but a taxicab within the contemplation and
21 intention of the legislation.

22 And as Mr. Edwards said, the Taxicab Board
23 Act evidences a clear legislative intent to empower the
24 Taxi Board -- Taxicab Board, to govern all aspects,
25 that's whether licensing them, whether regulating them,

1 setting fares, setting standards. That's what the
2 Legislature intended and it's your responsibility to
3 fulfill what the Legislature intended, not simply what
4 Avion intends.

5 And I submit to you one (1) thing further,
6 which is that it is entirely appropriate that the Taxicab
7 Board, being a board that possesses specialized knowledge
8 in motor vehicles for use in operation, in transportation
9 of persons for compensation, it's entirely appropriate
10 that they are and should be the board having
11 responsibility for dealing with the proposed Avion
12 vehicles and service.

13 I have -- I could go on, Mr. Chairman, but
14 I assume that the procedure followed by this tribunal is
15 that he who speaks first speaks last and that I will have
16 an opportunity for a short response to anything that Mr.
17 Edwards puts forward here today?

18 THE CHAIRPERSON: You will.

19 MR. SIDNEY SORONOW: Okay. So on that
20 premise, I conclude my remarks a little shorter than I
21 thought they would be with the final statement to you
22 that I understand that this Board is very skilled in the
23 functions it performs. I ask that same level of skill,
24 knowledge, and thoroughness be applied to jurisdictional
25 question, and if it is, I have every confidence that this

1 Board will conclude that based upon the legislation,
2 Section 163 cannot be satisfied and, consequently, that
3 this Board has no jurisdiction to proceed further with
4 this matter.

5 Thank you for your attention.

6 THE CHAIRPERSON: Thank you, Mr. Soronow.
7 We will turn our attentions now to Mr. Edwards.

8 Mr. Edwards, for Avion...?

9 MR. PAUL EDWARDS: Thank you very much,
10 Mr. Chair. Let me start, as My Friend did, by asking
11 that the submission of Avion, dated April 24th, 2009, be
12 entered as Exhibit 2 --

13 THE CHAIRPERSON: So be it.

14 MR. PAUL EDWARDS: -- in this Motion.
15 Thank you.

16

17 --- EXHIBIT NO. 2: Avion submission, dated April
18 24th, 2009

19

20 SUBMISSIONS BY MR. PAUL EDWARDS:

21 MR. PAUL EDWARDS: Let me also, just by
22 way of opening comments, mention my thanks to the Board
23 and to My Friend for accommodating the changing of the
24 date for this Hearing, two (2) days from Monday to today.
25 I appreciate that. It was at my request and so thank you

1 very much for that.

2 The reply, admittedly, was at the tail end
3 -- it came at the tail end of the time limit set out
4 under the rules. It was within the rules, but -- but
5 barely; I acknowledge that, and that was, again, my
6 personal schedule. And I trust that -- and I can see
7 from My Friend's submissions that he did have time to
8 review them.

9 So I -- I -- again, they were provided in
10 time, but then I neglected to send a copy to My Friend,
11 Ms. Wray. I apologize for that. I know she did get a
12 copy, so...

13 Of course, Avion, as you can see from the
14 materials before you, begs to differ with the position
15 put forward by My Friend and the Unicity/Duffy's. I am
16 not as colourful a speaker as Mr. Soronow, and I will
17 attempt to not repeat the comments made in the reply
18 materials, which I know, from your opening comments,
19 you've got a good grasp of. I would like to add a few
20 comments.

21 Firstly, by way of overview, I think it's
22 important to step back and see what -- what is being
23 asked for her by the movers of this Motion. This Board
24 is being asked, really, to find that both the Taxicab
25 Board and the City of Winnipeg were wrong in interpreting

1 and implying -- and applying their own enabling statutes;
2 in the case of the Taxicab Board, the Taxicab Act and
3 Regulations; and in the case of the City of Winnipeg, the
4 City of Winnipeg Charter. And that, after having not
5 raised these same arguments to either of those bodies,
6 allowing them to, yes, have the benefit of -- of these
7 comments, these parties had counsel throughout.

8 They had counsel at the Taxicab Board
9 Hearing on March 8th, 2006. They appeared and they made
10 representation to that. They had counsel at each of the
11 five (5) appearances and -- City Council committees, and
12 you've seen the submission which is part of the materials
13 of -- of Avion here, the narrative portion that was used
14 and -- and referred to throughout those proceedings.

15 So, the starting point from Avion is that
16 -- that that is -- it is important to understand what is
17 being asked here. The Public Utilities Board comes into
18 this in kind of a side -- sideways through this section,
19 which says, By the way, we, the City, will sign an
20 agreement, but we're going to send it to the Public
21 Utilities Board for approval of the agreement and to
22 authorize the operation and -- and ongoing supervision of
23 -- of the operation. So, it's -- it's kind -- you're
24 kind of pulled into this in a -- in a sideways way. And
25 you're coming in, of course, after years of dealing with

1 this and lots of lawyers.

2 And one (1) thing that I -- I don't want
3 to lose sight of, but I -- I -- is that, you know, Mr.
4 Wardrop's initial recommendation to the City committee
5 back in '06 -- and this is found at Tab 5 of Avion's
6 materials.

7 You know, if you look at the last page of
8 Tab 5 at the top, you know, he makes clear in preparing
9 this report there was internal consultation with and
10 concurrence by Legal Services branch so this has been
11 reviewed by the City of Winnipeg lawyers; this isn't the
12 transit official determining that this falls under
13 Section 163. So there -- there certainly was legal
14 counsel involved with the City of Winnipeg making that
15 decision.

16 And in fact, as -- again I won't repeat
17 and -- and recount it but counsel for these same parties
18 made clear that they were actually supportive of the
19 referral of the matter, the agreement to -- to this
20 Board.

21 Second point by way of overview, if this
22 Board were prepared to go down this road at this time of
23 analysing the jurisdictional issues, the legal issues.
24 It is the Charter of the City of Winnipeg and Section 163
25 which sets out your jurisdiction. Of course, there's no

1 reference to this Board under the Taxicab Act or the
2 Taxicab Regulations.

3 And really, two (2) things are asked here
4 by this motion: one (1) is that you find that neither
5 the City nor yourself have jurisdiction to deal with it,
6 but secondly, that you would essentially tell the Taxicab
7 Board they were wrong and they had jurisdiction.

8 Now, I say this only half facetiously. It
9 wouldn't be that unfortunate for Avion if this Board were
10 to decide in the former case that you didn't have
11 jurisdiction and then we have a decision of the Taxicab
12 Board saying they don't have jurisdiction either; maybe
13 it's unregulated. I say that half facetiously. The
14 reality is that this Applicant came to the City in good
15 faith understanding that it fell under Section 163 and
16 still believes that.

17 Just another general comment, within
18 Section 163 this Board is empowered to -- I want to get
19 the word right. My Friend's submission sets it out.

20

21 (BRIEF PAUSE)

22

23 MR. PAUL EDWARDS: This Board is
24 empowered to oversee the -- I'll just get it here; I'm
25 sorry -- approve the agreement and is authorized -- and -

1 - and be authorized by this Board to operate the local
2 transportation service.

3 Now -- and then it goes on to say:

4 "The operation is in all respects
5 subject to the authority and
6 supervision of that Board."

7 So I think it's certainly open from that
8 section that if this Board wanted to put conditions on
9 its approval, that would certainly be within its -- its
10 power to do. It is looking at the City of Winnipeg's
11 agreement which has many conditions but if this Board
12 itself felt that on some of the issues that My Friend has
13 raised and that Avion has raised such as size of the
14 vehicles, such as signage on the vehicles, it's certainly
15 open to this Board to make that part of their conditions
16 of approval and operation.

17 There is a -- there are different terms
18 used in the -- in the pieces of legislation and I think
19 that's important as part of the overview to understand.
20 Section 100 and -- or sorry, Section 1 of the Highway
21 Traffic Act in defining "taxicab" talks at Sub F as:

22 "Not including a motor vehicle or a
23 vehicle of a class, motor vehicles that
24 the Taxicab Board established under the
25 Taxicab Act excludes."

1 A couple of points there. That section
2 specifically references the authority of the Taxicab
3 Board to exclude from the definition of taxicab. So it
4 just doesn't say as excluded by the Taxicab Act or
5 pursuant to that Act. It goes -- it actually references
6 the authority of the Board.

7 Secondly, it uses the word 'excludes'.
8 And the position of Avion is that when you look at the
9 Taxicab Act and the acts of the Board pursuant to that
10 Act which is the regulations, they have excluded what is
11 the Application, the essence of the Application before
12 you.

13 Exclusion can be explicitly such as
14 Section 2 of the regulations which specifically says,
15 these types of vehicles are exempted. But it can also be
16 implicitly. If a regulation defines a codifies a group
17 of vehicles or types of vehicles that are going to be
18 regulated by necessary implication others that don't fit
19 within that can be excluded.

20 And so that's a key point is that when the
21 Taxicab Board went to promulgate the regulations and put
22 in place the regulations flowing from the Taxicab Act,
23 they certainly had the right and they did to lay out in
24 detail the types of vehicles that they were intending to
25 regulate and require to be licensed. If by implication

1 of those very specific definitions, other types of
2 vehicles were not included then that is also an exclusion
3 albeit by implication not by explicit reference.

4 I want to address a few of the points My
5 Friend raised. First, you will see set out in the
6 Avion's materials reference to the size of these vans,
7 the seating capacity. And that is an issue which Avion
8 itself raised in the context of saying that these vans
9 are not passenger vans within the meaning of the -- of
10 the definition set out in the Taxicab Regulation.

11 Firstly, you'll see in the materials and -
12 - and there were two (2) sets of materials filed with
13 this Board admittedly. There was an initial Application
14 material that goes back I think to '06 -- '07, I'm sorry.
15 And then there was a secondary one filed in '08.

16 And there is a discrepancy in those two
17 (2) documents when it refers to the size of the vans.
18 That's acknowledged and the -- in the first of those
19 materials you'll see it was actually part of it
20 referenced the -- the specifics of the van and the Dodge
21 Sprint van. There was some material in there.

22 Dodge may not be in business by the end of
23 today so there -- there may be some other need to search
24 out other vans. But the point is that it has always been
25 intended and -- and the representatives of Avion are here

1 that Avion would have any of its vans actually outfitted
2 with the lift and the ramps. As indicated in Avion's
3 materials, that certainly is an option. It's a very
4 expensive one, of course. But there's lots of other
5 options within "best efforts," one (1) of which, for
6 instance, just as an example, would be to arrange to
7 contract the service out and arrange for other providers
8 to provide transportation when needed -- perhaps with
9 Unicity or other care -- companies that have vans --
10 vehicles that are equipped.

11 There are many other arrangements, and
12 there was certainly no decision -- there is no decision -
13 - to put in place a -- a vehicle that would have that
14 equipment. That probably would be preferable. It may
15 not be the most cost-effective way to meet that
16 commitment.

17 And, really, when you look at Section 2 of
18 the Regulations and the exemption which Avion says it
19 fits into, and, of course, this is the alternative
20 argument, really, is that what's intended by that section
21 when it excludes passenger vans that are equipped with
22 that equipment that can accommodate disabled individuals?

23 Clearly, I mean, some common sense, I
24 think, needs to be applied. There are businesses, there
25 are operations where that is the job, that is -- that is

1 what they're doing. They're accommodating disabled
2 individuals in Handi-Transit and other dedicated
3 businesses and -- and services are available. That's not
4 what's intended here. Avion seeks to make available,
5 where needed, on appropriate notice, the ability to
6 transport those individuals who are disabled and in
7 wheelchairs.

8 So Avion's position is that looking at the
9 -- the -- both the plain meaning and the clear intent of
10 that exemption, Avion fits within that exemption. This
11 is not a business dedicated, as the Portsmouth van is, to
12 dealing with and -- and servicing individuals in large
13 numbers who are -- who are disabled.

14 The comment of My Friend that the tag --
15 I'm sorry I'm jumping around a bit, but I'm trying to
16 keep this as succinct as possible. Taxicab Board, I
17 think he mentioned, you know, didn't make a decision
18 therefore, you know, you -- you don't really have to
19 worry about that. You're not overriding anything. There
20 was nothing to be appealed.

21 Avion disagrees. Nothing could be clearer
22 from both the November 22nd, '06 letter from the
23 Secretary of the Taxicab Board to the City, and the
24 response to the request from this Board where that letter
25 is set out again, than -- that a decision was made by

1 that Board that they did not have jurisdiction.

2 And the Taxicab Board actually went
3 further. They said -- and this is -- that -- that
4 November 22nd, '06 letter is at Tab 3 of Avion's
5 materials. They actually said:

6 "The Taxicab Board is satisfied that
7 this agreement and service -- [and
8 service] -- would not fall within the
9 jurisdiction of the Taxicab Act and
10 Regulations, and therefore has no
11 objection with the proposed service."

12 They didn't deny it based on the -- the
13 merits. What they said was, in fact, the opposite. They
14 said, We have no objection. Basically, you know, they're
15 not supporting it, nor are they objecting to it. They're
16 just saying we don't have jurisdiction; that's it. It's
17 -- it's in your court.

18 That is a decision; that's a decision that
19 the mover here knew about many years ago and as I've
20 repeatedly said took no objection to and it's a decision
21 taken by a Board that -- whose only enabling statute was
22 the Taxicab Act and Regulations. Unlike this Board, they
23 don't have a number of other different pieces of
24 legislation that they function under; they have one (1)
25 and they considered it and made a decision.

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(BRIEF PAUSE)

MR. PAUL EDWARDS: Now, you've got the comments of Avion as to how it sees the Taxicab Act and the Taxicab Regulations working. The only thing I would add based on some of the comments of My Friend in this concept that you can exclude or exempt -- and I'm not sure there's much to choose between the word "excluse" and -- "exclude" and "exempt" but I think it is important to note that there's a difference. The Highway Traffic Acts uses "exclude" and -- and Taxicab Act uses "exempt" which then picks up on Section 2 of the Regulations which uses the word exempt.

So we're dealing here with the Highway Traffic Act. Is it excluded? And you've got my comments on things can be excluded by way of implication as opposed to explicit section and delineation. The only thing I would also add I think on this issue of is it a taxicab is that no doubt -- and there's no dispute, that concept -- and were it so simple as asking the question My Friend ended with, I think he said ask yourself is the proposed service one intended to use vehicles for the transportation of persons for compensation?

For sure. The answer to that is yes;

1 there's no dispute there but the issue is compensation
2 and these sections go further and they define exclusions
3 and exemptions and the truth is that the Taxicab Board
4 has been very, very clear and the regulations are very,
5 very clear and get down to the nth detail of the types of
6 vehicles that fit within that definition. And they say
7 in Sections 4 and 5 as set out in our materials here are
8 the types of taxicabs, period, not others. They're very
9 clear. Then the definition section defines each one of
10 course as indicated in the materials.

11 So I mean they created a closed circle
12 here of the vehicles that are inside and when you go
13 through the definitions -- and I've discussed passenger
14 van, but then you go to metered taxicab, no dispute from
15 My Friend that once you get into the regulations, meters,
16 it's time and distance and there's no issue there.

17 So as for metered taxicab, which is one
18 (1) of those five (5) types, they all rely on the time
19 and distance. We clearly don't fit so you've got that
20 point.

21 And as My Friend points out, there may be
22 passenger vans; there may be limousines and other that
23 are taxicabs but don't use meters. There's no -- no
24 issue or dispute there; you've got Avion's point on -- on
25 that.

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(BRIEF PAUSE)

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4 MR. PAUL EDWARDS: My Friend made the
5 point that in referring to Avion's comments about, you
6 know, the -- the context here and the delay and -- and
7 the fact that these issues haven't been raised. Avion's
8 point simply is that in administrative law as with
9 regular civil litigation and -- and it's always open to a
10 Board to consider context in determining the -- the
11 legitimacy of a motion even one on jurisdiction.

12 Delay and waiver are and can be applicable
13 in assessing the context of a motion. And even on one
14 such as this. I certainly would not disagree with My
15 Friend that if this Board were to determine it did not
16 have jurisdiction, then frankly if -- if you have it --
17 that can't be cured essentially because of arguments
18 about delay or waiver.

19 If you don't have it, you don't have it.
20 I understand that. But clearly understanding the context
21 and the various other Boards that have ruled on this is
22 important. It should and I know will be taken into
23 account.

24 I would like and I don't think I need to
25 take the lunch break to make further comments. I would

1 like to take five (5) minutes to consult with my client.
2 I think I can wrap up my comments fairly quickly and if
3 we can take that five (5) minutes now I think that we can
4 come back and probably take a lunch break pretty quickly,
5 Mr. Chair.

6 THE CHAIRPERSON: Very good then.

7

8 --- Upon recessing at 11:54 a.m.

9 --- Upon resuming at 12:05 p.m.

10

11 THE CHAIRPERSON: Okay, welcome back.

12 Mr. Edwards ...?

13

14 CONTINUED BY MR. PAUL EDWARDS:

15 MR. PAUL EDWARDS: Thank you, Mr. Chair.

16 Just one (1) other comment that I -- I didn't make
17 earlier specific to the November 22nd '06 letter from the
18 Taxicab Board speaking to their finding that that Board -
19 - the Taxicab Board did not have jurisdiction.

20 One (1) thing that I noted and wanted to
21 point out was that that letter and this is at Tab 3 of
22 Avion's reply materials, does say in the first paragraph
23 as well:

24 "The Taxicab Board met on November
25 22nd, 2006 and did review the

1 document."

2 And so the decision about it not falling
3 within the jurisdiction of the Taxicab Board, that is a
4 decision taken by the Board clearly as reflected in this
5 letter.

6 The Board met and discussed that it's not
7 a decision, simply an opinion given by the Secretary of
8 the Board. Clearly it was after consideration by that
9 Board albeit there's no indication if that was a public
10 meeting or not. Avion's position would be that doesn't
11 matter, that's clearly a decision taken by that Board.

12 In conclusion, Mr. Chair, and Members of
13 the Board, Avion asks that the motion be denied and asks
14 that we get on with the Hearing scheduled for later in
15 May and believes that its Application does fit within the
16 jurisdiction of this Board and has had that position
17 since being told by the Taxicab Board that they didn't
18 have jurisdiction.

19 So we recognize that the authority and
20 responsibility of this Board is -- is quite broad set out
21 in the City of Winnipeg Charter and of course are as in -
22 - in submitting to this Board are -- are asking for
23 approval of the agreement but also recognize that the
24 Board will -- may have certain conditions attached to the
25 operation and that is certainly within the framework I

1 think of Section 163(3) and with that I'll end my
2 comments subject to questions or comments the Board may
3 have both now or -- or after My Friend's final
4 submissions.

5 THE CHAIRPERSON: Thank you, Mr. Edwards.
6 We're going to go to Mr. Soronow in just
7 one (1) moment. Ahead of that I'll call on Ms. Wray or
8 Mr. Saranchuk if they have any comments from Board
9 counsel's perspective.

10 MR. WALTER SARANCHUK: Yes, Mr. Chairman,
11 just as is the practice in matters like this the role of
12 Board counsel is really just to set the parameters or
13 remind the Board as to its parameters in dealing with
14 matters like this.

15 I only have a few comments to make and
16 firstly, I'd indicate that as the Board is well aware it
17 has already ruled that it accepts jurisdiction by virtue
18 of Section 107 of its own Act in relation to the
19 provisions of Section 163(3) of the City of Winnipeg
20 Charter; that should be Subsection 163(3).

21 That decision essentially - if I may so
22 suggest essentially - recognized the agreement between
23 Avion and the City of Winnipeg as being a valid agreement
24 and assumed by implication if I may say so that the City
25 considered itself having the authority to make that

1 agreement.

2 Secondly, the present motion calls for the
3 Board not only to refute its earlier decision but also to
4 interpret legislative provisions in various enactments
5 other than its own.

6 Thirdly, there is the question of the
7 public interest which of course is at the root of the
8 Public Utilities Board mandate and the question is
9 whether the public interest would be served if there were
10 to be a further delay of these proceedings.

11 So essentially, the decision to be made by
12 the Board is, therefore, whether it will continue to hold
13 that it has jurisdiction and therefore proceed with a
14 public Hearing within the next month essentially. That
15 is it, those are all my comments.

16 THE CHAIRPERSON: Thank you, Mr.
17 Saranchuk.

18 Mr. Soronow...?

19

20 REPLY BY MR. SIDNEY SORONOW:

21 MR. SIDNEY SORONOW: Yes. Mr. Chairman.
22 I'd like to deal firstly to comment on the comments made
23 by Mr. Saranchuk. I have no doubt that the City must
24 have at the time thought it was appropriate to move
25 forward with these policy committee hearings but what is

1 significant is that the City -- and even if they had a
2 lawyer from the City that at any point gave comment, it's
3 obvious and indeed Mr. Edwards has been at pains to say
4 the issue raised here was never raised there and that's
5 the problem.

6 The issue has never been considered by
7 anyone in the context in which it is presented today so
8 the fact that the City may have gone forward to have
9 their policy committees entertain representations being
10 made by this party or that party is not ultimately
11 relevant. What is relevant is on examination of the
12 legislation do you or don't you have jurisdiction?

13 The fact that you have continued with this
14 matter at least to this point only speaks to the fact
15 that a board entertains an application and then deals
16 with in the course of that application any issues as to
17 its jurisdiction. It's appropriate rather than going to
18 the court in the first instance for an order certiorari
19 that the Board itself be called upon to entertain a
20 question as to its jurisdiction and then having had the
21 opportunity to entertain it, consider it, make a
22 pronouncement which this Board has never done on the
23 issue raised here today, that either party to the
24 proceedings who feels aggrieved by the decision that is
25 made has the opportunity to apply to the Court of Appeal

1 and it's clearly an application dealing with a
2 jurisdictional matter.

3 So again, as I said earlier, it is
4 unfortunate that no one raised -- considered the issue in
5 that context other than the fact that Ms. Wilson
6 throughout those proceedings kept saying that it should
7 be at the Taxicab Board admittedly without the clarity of
8 reasoning and reference to why it should be there and may
9 not have even ascertained in her own mind other than
10 instinct that it should be there. But we are now faced
11 with a legal issue.

12 It's this Board's obligation,
13 notwithstanding that they have entertained this
14 application initially. That's always the case when an
15 application is filed. A Board starts down the path until
16 a question arises as to its jurisdiction.

17 As to the issue that Mr. Saranchuk spoke
18 of -- public interest in the context of delay, the public
19 has an interest in ensuring that any tribunal that
20 entertains and is going to be called upon to make a
21 decision, has the jurisdiction to do so.

22 It is not in the public interest, it is
23 not in Mr. Saranchuk's interest, not in your interest,
24 not in Duffy's or Unicity's interest, and certainly not
25 in the interest of Avion, for all of us to be spending

1 the time, effort, cost, associated with a Hearing of this
2 matter on the merits if, in fact, this Board, on
3 analysis, as I submit is the case, is without
4 jurisdiction. If anything could be contrary to the
5 public interest, it's precisely that; that's Boards
6 occasion more time, effort and cost to parties when they
7 didn't have jurisdiction in the first place.

8 So it's entirely appropriate at any stage
9 in the proceeding for the issue to be raised, and as made
10 clear from everybody's comments, it's a matter of first
11 instance in the sense that, without condemning prior
12 counsel for any of the parties involved, nobody thought,
13 it appears, to conduct the analysis that should have been
14 conducted from the outset, whether that's the City or
15 it's Avion or Unicity and Duffy's, through their prior
16 counsel. But that -- nothing turns on that. At the end
17 of the day, you either have or don't have jurisdiction.
18 So that's what we're dealing with.

19 My Friend keeps referencing, as he did in
20 his remarks a few moments ago, the letter of November
21 22nd, 2006 which was sent by the Taxicab Board. He
22 references it as a finding. I would not elevate it to
23 that characterization at all. It's obvious, and I can
24 assure this Board that whatever the Board talked about at
25 their meeting of November 22nd prior to issuing that

1 letter was done in a vacuum. It was not done with the
2 benefit of either Avion, Unicity, Duffy's, or anybody
3 else to make representations.

4 But I think what we've lost here is
5 context, and I would invite you to review the material at
6 Tab 7 of My Friend's submission. Tab 7 contains a letter
7 from Unicity Taxi to the Taxicab Board. And what that
8 letter essentially says: I've heard you wrote some
9 letter to the City of Winnipeg. Could you please send me
10 a copy.

11 And then you turn from there to the reply,
12 and I'll admit this is the first time I actually saw
13 those letters was when they appeared in that submissions.
14 But when you look at the reply, one (1) thing you'll note
15 is he doesn't forward a copy of the letter. He just
16 explains about the letter and what does he say? If you'd
17 look at the third paragraph, he says:

18 "The letter of reply sent to the City
19 of Winnipeg Standing Policy Committee
20 on Infrastructure, Renewal, and Public
21 Works indicated that the Taxicab Board
22 has no authority over the proposed
23 contract and, therefore, has no
24 objection to the proposed service."

25 What he was essentially saying is not, We

1 don't have jurisdiction in respect of these vehicles, but
2 rather, We don't have jurisdiction over a proposed
3 contract.

4 And I said to you early, and -- and repeat
5 again right now, that it's probably true that the Taxicab
6 Board does not have jurisdiction in respect of a proposed
7 contract. Its jurisdiction is in relation to the
8 vehicles and service, not a proposed contract.

9 So probably rightly he stated, We don't
10 have jurisdiction on a proposed contract. That doesn't
11 exclude the notion that if, in fact, Avion went down this
12 pipe and were ultimately, from this Board, contrary to my
13 objection and contrary to what we'll see the Court of
14 Appeal might say -- but if they ultimately got authority
15 from this Board and started the service, it would be open
16 to the Taxicab Board to use its enforcement proceedings.
17 Nothing is waiving their jurisdiction. He's simply
18 saying, We don't have jurisdiction over a proposed
19 contract; that's what his letter of November 27...

20 And he says, It's because of that. He
21 says, And therefore no objection to the proposed service.
22 So the lack of objection is because they don't control a
23 proposed contract. But that's a totally different animal
24 than looking at the legislation and -- what is intended
25 here, and then saying, is it in the jurisdiction of the

1 Taxicab Board.

2 So I come back to -- recognizing the
3 context of their letter, which I think you have to
4 appreciate, but be that as it may it wouldn't matter what
5 the Board says because that -- any statements they make
6 we don't know what they considered. Did they look at the
7 City of Winnipeg Act? Do we know whether they had any
8 knowledge that it had to be in the exclusive authority of
9 that tribunal -- sorry, of the City of Winnipeg?

10 So you know, you ought not to be unduly
11 influenced by these casual letters that were sent,
12 particularly when you look at the letter of November
13 27th, 2006 which supplies some context to what was the
14 Board trying to say. Admittedly it's sometimes difficult
15 to have discerned exactly what the Board was trying to
16 say, or why it was saying it. We weren't there. No
17 representations were made. It's not a finding; it's a
18 letter. It's not challengeable in the courts. But if
19 you look at the letter of November 27th you get a much
20 better inkling as to why they said what they said.

21 And Mr. Edwards, towards the latter part
22 of -- almost the end of his submission, said, You've been
23 told by the Taxi Board that they do not have
24 jurisdiction. I don't agree with that. They -- not only
25 do they have jurisdiction, they use the jurisdiction to

1 entertain -- pro -- process entertain, hold a Hearing on
2 an application by Avion; essentially the same as the
3 proposal they're putting here, they entertained it. If
4 they didn't have jurisdiction they would have just said,
5 We don't have jurisdiction, get the heck out of here.
6 They have jurisdiction; they exercised the jurisdiction.

7 The problem is that as with all
8 administrative tribunals when you've disposed with
9 finality of an application before you, you are now
10 functus. There's nothing more for you to do or that you
11 can do until some time when the matter surfaces in the
12 context of another application before you by Avion, or
13 Avion were to commence, irrespective of this Board or
14 anybody, the service, and then Section 4 of the Act would
15 kick in and draw on the enforcement powers of the Taxicab
16 Board.

17 So, you know, take this with a grain of
18 salt, this notion that he says to you, Mr. Edwards, told
19 by the Taxi Board that the Cab Board, they did not have
20 jurisdiction or do not have jurisdiction. No, they have
21 jurisdiction. They entertained an application, processed
22 it, heard a -- had a Hearing, dismissed it on its merits;
23 what more is the Board suppose to do as evidence of its
24 jurisdiction than to handle the Application and dismiss
25 it or grant it, whatever the case might be?

1 transportation."

2 It's clear, and moreover, then he's now
3 trying to move the goalpost again. Now he's saying,
4 Well, you look, it'll be a sometime thing. It doesn't
5 matter. Frequency is not the test; the test is that
6 their intention is to handle the disabled. Well, then he
7 says, You know what, maybe we won't ourselves handle it
8 but we'll hand it off to somebody; maybe even Unicity
9 we'll hand it off to.

10 Well, Mr. Chairman, this is very
11 interesting because the document that he relies on from
12 the City of Winnipeg as constituting his, quote,
13 "agreement," specifically prohibits them from handing-
14 off. So how are they going to hand off? Moreover, where
15 in their submission -- I mean you can't come to a board
16 and just, you know, keep changing your application to
17 kind of try to slide thorough. You can't just do that.

18 So their own Application, front and
19 centre, as, by the way, for human rights purposes, again
20 I say I'd like to see them come forward and say, We're
21 not going to handle the disabled. If that's what he's
22 trying to say, just say it, because then he's got a whole
23 mess of problems.

24 The fact of the matter is no matter how he
25 tries to slip and slide, it's in their Application. It's

1 clear. It's unequivocal. It's not, We're going to pass
2 it off to someone else. And indeed, how could he
3 possibly say that because in -- on page 9 of the 2008
4 Application and also on page 7, they're bragging about
5 the fact that all CityConnect drivers will be trained in
6 the use of securement systems, ramps, and lifts, and will
7 assist customers with disabilities as requested in
8 entering and exiting accessible vehicles.

9 Well, wait a second. Why would your
10 drivers be trained in that if that's not the business
11 you're doing? It makes no sense, Mr. Chairman. I didn't
12 come down with the weekend's rain; you didn't; hopefully
13 Mr. Edwards didn't either. Come on.

14 It's as clear as the nose on your face
15 that they're just trying to slip-slide, keep changing the
16 parameters, changing the application every time when they
17 see they got an insurmountable problem.

18 So the fact is that under the exemption,
19 the moment they are involved in is not used for the
20 transportation of disable persons, he's finished -- the
21 moment he's doing work for disabled persons -- finished.
22 Whether he has a lift, doesn't have a lift -- you know,
23 it's funny, there -- while there's no specific page of
24 similar character in their 2008 -- it doesn't describe
25 kind of the vehicles; I can't find it in my copy. In

1 their 2006 they're describing the fact that the vehicle
2 will be outfitted with the accessible options, which I
3 assume to be the ramp and lift. So -- and -- and they're
4 going to have drivers who know how to use them.

5 So it's obvious that that's a part of
6 their intention. And by the way, I got to say to you I
7 approve that the intention should be to carry disabled.
8 I agree with the concept that disabled people, as they
9 try to say, are entitled to that kind of service and
10 they're committing themselves to principles and I don't
11 disagree with those principles. I endorse those
12 principles, as would any of the human rights regulators
13 or people interested in that subject matter, as would the
14 disabled community, but then don't come here and try to
15 water that down or perhaps even eliminate it.

16 I'm not sure he tried to eliminate, it but
17 the fact that he didn't try to eliminate it, again,
18 speaks to the fact that -- and there's two (2) tests:
19 They have ramp or lifts -- and it's not -- and -- or is
20 it not used for the transportation of disabled persons.
21 It is being used for the transportation of disabled
22 persons in Section 2(b).

23 So they're caught and the moment they're
24 caught, this Board, as you rec -- I hope you recognize
25 has no jurisdiction. Then he -- you know, then he starts

1 talking because he thinks it's going to help him somehow
2 to start telling you, Well look we're only going to have
3 nine (9) passengers.

4 And, you know, in the Taxicab Regulations
5 there's reference to a passenger van and -- and it talks
6 about eleven (11), we're only going to have nine (9).
7 Oh, just forget about the fact that our Application says
8 fifteen (15). You know, just ignore that. I don't know
9 why we said that.

10 Mr. Chairman, people have to stand on the
11 ground that they presented to this tribunal. His
12 material says it's fifteen (15) passengers. Don't be
13 taken in by somebody who's going to just keep changing
14 the goal post every time they see they can't score a
15 touchdown.

16 That doesn't make sense. That's
17 inconsistent with the way hearings operate before
18 administrative tribunals. And moreover where My Friend
19 falls down again is that even if they intended it to be a
20 nine (9), to operate by taking only nine (9) passengers,
21 even the -- you know, I don't think anything turns on it
22 and I'll explain why.

23 But the passenger van definition that he
24 references isn't referencing how many passengers you --
25 you take, it's talking about the seating capacity. And I

1 went on the web, unfortunately I could only check the
2 2009 Sprinter 2500 that they say they're going to use and
3 at least I don't know how many passengers it may have --
4 because they're saying in 2008 their presentation said
5 they were going to have fifteen (15), maybe the 2008 was
6 different.

7 But the seatings in the standard vehicle
8 and you can find it on the web yourself or, you know, I
9 can leave -- I can certainly leave it with you, it's the
10 only copy I brought I didn't just happen to have it in
11 the file I didn't expect to need it. The seating for the
12 Sprinter 2500 vehicle that they're talking about by its -
13 - and this is official from Dodge, for the Dodge website
14 says the seating capacity they say is twelve (12).

15 So, you know, somehow he's trying to say
16 well we're not a passenger van because we're only going
17 to take nine (9) people. The fact, his Application said
18 fifteen (15), you know, just forget that.

19 But he's also forgetting that for purposes
20 of this matter if you're trying to look at definitions
21 they -- it's not how many you're going to take it's
22 what's the capacity of the vehicle and the standard specs
23 for the Sprinter 2000 (sic) say twelve (12).

24 Now by the way that brings me to another
25 of his arguments which is illusory in its character.

1 What he's trying to say is that the Taxi Board only has
2 jurisdiction in respect of whatever vehicles descriptions
3 they -- they put down in the regulation.

4 No, that's not correct. You do not
5 determine jurisdiction by reference to regulations, you
6 determine it by reference to the enabling legislation.
7 The only reason as I told you we're even looking at the
8 regs is because under the Taxicab Act it provides that
9 the Board can exempt certain kinds of motor vehicles.
10 The Board can. So he's trying to say, Well, you know,
11 the Highway Traffic Act says excludes. The Taxi Board
12 Act says exempt.

13 Well, yeah the Highway Traffic Act says
14 excludes but what is the character of exclusion it's as
15 determined by the Taxicab Board Act which is exemptions.
16 If they want to exempt something from the definition of
17 Taxicab the general legislative definition they have
18 authority to do that. And they've expressed that or
19 carried it forward in Section 2 which by the way since,
20 you know, we have only focussed on 2(b) because that's
21 the only one that My Friend has tried to shoehorn himself
22 into.

23 But there are other kinds of exemptions.
24 He doesn't fit them but that was -- so -- but -- but the
25 only reason they can exclude or exempt any is because the

1 Legislature said they could.

2 The Legislature provides a general
3 definition that's applicable to everybody and everything
4 carrying a motor vehicle that carries passengers for
5 compensation. And the only "if," "and," or "but," to
6 that is if the Taxi Board under its legislation, the
7 board constituted under that legislation, not excludes,
8 exempts is the wording -- exempts. These are the only
9 exemptions. My Friend did not try to take you to some
10 other exemption that I missed in the regulations 'cause
11 there is no other.

12 This is the sole exemption section. He
13 can't and he bears the onus to bring himself within the
14 exemptions and I'm submitting to you and I've canvassed
15 the one about the carrying disabled. I -- I invite you
16 to also look at number 2 which he didn't even comment on
17 which is about -- is operated in a written contract
18 providing for the exclusive use of the vehicle to a
19 person for a term not less than twelve (12) months but I
20 tried to explain to you why they don't fit in there; it
21 doesn't fit at all and it's meant for people like the
22 Portsmouth that I indicated.

23

24

(BRIEF PAUSE)

25

1 MR. SIDNEY SORONOW: If you give me a
2 moment, I'm working backwards because I thought it was
3 best to deal with the moment -- the comments that he made
4 that were most fresh in your mind.

5

6 (BRIEF PAUSE)

7

8 MR. SIDNEY SORONOW: He said to you an
9 exclusion can be explicit or implicit. No, it can't.
10 The legislation drives what is a taxicab and the
11 legislation drives that the only things that are exempted
12 from that definition are what they exempt. You can't run
13 around trying to have the regulations override the
14 legislation; that is not a proper application of the law.
15 It's the legislation that drives the answer to the
16 question we have before us.

17 Again, the only reason we're dealing with
18 the regulation at all is because of the legislation
19 empowering the Taxi Board -- Taxicab Board to create
20 exemptions. They have to be explicit; he has to
21 explicitly bring himself within them if he wants to apply
22 an exemption and he bears the onus in that regard.

23 He suggested to you that under Section 163
24 this Board could put conditions on the applicant and then
25 he mentioned size, signage. He's a step ahead of himself

1 because the Board has to have jurisdiction to start with.
2 If the Board doesn't have jurisdiction, it ought not to
3 be going forward with this matter let alone contemplating
4 what kind of conditions to put upon them.

5 Moving backwards he suggested to you,
6 again notwithstanding my earlier comments that, you know,
7 Unicity and Duffy's had counsel at the Taxicab Board
8 meetings of March 8th and hearings before the City of
9 Winnipeg and this Board is being asked to find that the
10 City was wrong legislatively, that the Taxi Board was
11 wrong. I just simply say to you the Taxicab Board dealt
12 with Avion. They exercised their jurisdiction.

13 He -- if he has a different application,
14 you know, he wants to keep moving the goalpost, then make
15 another application before the Taxicab Board and I can
16 tell you sure as shooting that they will entertain it,
17 they will process it, they will hold a public Hearing on
18 it, and he'll either be successful or unsuccessful, but
19 that is the forum for this to occur.

20 This, you know, idea of trying to perhaps
21 frighten you by the notion that the decision that you
22 would make if you agree with the motion is somehow
23 telling somebody else they're wrong, let's say the City;
24 that's not a frightening concept because -- with respect
25 to any third party because no one else ever stopped to

1 look at the issue but you are being called upon to look
2 at the legislation and decide the matter. It's entirely
3 appropriate, and whatever your decision is, is not an
4 insult to someone else. It's only a recognition that
5 this Board can't meet the tests of 163.

6 And at the end of the day, you are -- I
7 mean, 107 of the Public Utilities Act is -- is not
8 breathing life into this Board to run around like the
9 Court of Queen's Bench and have inherent jurisdiction on
10 everything.

11 It is simply saying that where you are
12 accorded, by some statute, the proper jurisdiction, then
13 you can exercise it. But it presupposes that under the --
14 - the relevant companion -- I'll call it "legislation",
15 which is this case or, as My Friend called it, "you're
16 here sideways" because you come through the City of
17 Winnipeg, another Act of the Legislature.

18 And the Legislature, as My Friend said,
19 expected that the Taxicab Board would exercise a
20 comprehensive jurisdiction in relation to motor vehicles
21 running around picking up people or travel --
22 transporting persons for compensation.

23 Yes, it does. We all know that. It had
24 an Act here -- the City of Winnipeg Act. It said that
25 for this matter to go forward, the City has to have

1 exclusive jurisdiction, even -- not even joint
2 jurisdiction -- it has to be exclusive. No one else can
3 have jurisdiction.

4 So, I -- I've tried, I hope -- let me just
5 quickly look at my notes -- to cover the high points, or
6 perhaps low points, of -- of My Friend's submission so as
7 to respond to them.

8

9 (BRIEF PAUSE)

10

11 MR. SIDNEY SORONOW: You know, as a
12 better -- would it be fair to ask this Board for a five
13 (5) minute adjournment so I can review my notes; at the
14 same time, check with my client if they think that, in my
15 zeal to put forward our position, we've overlooked
16 something?

17 THE CHAIRPERSON: That's fine, Mr.
18 Soronow.

19 MR. SIDNEY SORONOW: Could we have five
20 (5) minutes?

21 THE CHAIRPERSON: Yes.

22 MR. SIDNEY SORONOW: Yes.

23

24 --- Upon recessing at 12:40 p.m.

25 --- Upon resuming at 12:48 p.m.

1 THE CHAIRPERSON: Okay, Mr. Soronow.

2 MR. SIDNEY SORONOW: Thank you, Mr.
3 Chairman. I'll be exceedingly brief.

4

5 CONTINUED BY MR. SIDNEY SORONOW:

6 MR. SIDNEY SORONOW: Just wanted to,
7 again, remind you that in the Exemption 2(b), it
8 references

9 "a motor vehicle with a seating
10 capacity of seven (7) or more persons
11 including the driver, that..."

12 et cetera, which ought to tell you that
13 the Taxicab Board ministers to and has jurisdiction of
14 authority over motor vehicles which Avion's -- any way
15 you slice or dice it -- they're still motor vehicles.

16 And -- and this idea that it has to do
17 with the eleven (11) passengers, you can see that the
18 Board exercises jurisdiction over seating capacities of
19 one (1), two (2), three (3), eight (8), ten (10),
20 fourteen (14), fifteen (15) -- you know, the reference is
21 to motor vehicles. So they assume they have jurisdiction
22 and, by the Statute, they do.

23 So, with those concluding remarks, I leave
24 it with the Board to address this application, but with
25 the beseeching comment that as -- that this Board not to

1 venture on further in a matter that the Legislation of
2 the City of Winnipeg Act never intended that they should,
3 and to be mindful of the fact that the Taxicab Board is a
4 specialized Board that is focussed on and has the
5 background skill et cetera which is not to diminish the
6 capacities of this Board but in the area of
7 transportation of persons for compensation.

8 I don't know whether you wanted me to
9 leave with you that reference from the Dodge website of
10 the 2009 Sprinter indicating that it has a twelve (12)
11 seat configuration.

12 If you want I'll leave it, if you don't --
13 and any of you can find it just as easily.

14 THE CHAIRPERSON: I think that would be
15 fine, Mr. Soronow. We take your point on that.

16 MR. SIDNEY SORONOW: Yeah.

17 THE CHAIRPERSON: Thank you very much. I
18 thank you everyone for coming. I think the oral Hearing
19 of this particular Application is helpful to the Board.

20 Paper based one would not have provided us
21 the full discussion I think that we've had today. The
22 Board will provide its decision on the taxicab companies'
23 motion in due course and most certainly ahead of the
24 scheduled Hearing for the Application itself.

25 Mr. Edwards...?

1 MR. PAUL EDWARDS: I'm sorry, I haven't
2 seen the exhibit My Friend is putting in and I don't need
3 to.

4 MR. SIDNEY SORONOW: I didn't put it in.
5 They said --

6 MR. PAUL EDWARDS: Is it -- I'm sorry, is
7 it going to do in as evidence?

8 THE CHAIRPERSON: No.

9 MR. PAUL EDWARDS: Okay, I'm -- I'm sorry
10 I misunderstood that. Thank you very much.

11 THE CHAIRPERSON: I think he was just
12 pointing out there was a particular configuration of a
13 Dodge van --

14 MR. SIDNEY SORONOW: Capacity.

15 THE CHAIRPERSON: Capacity off the
16 website.

17 MR. PAUL EDWARDS: Right, right. If you
18 don't take the backseat out for luggage, it's twelve
19 (12). That -- that I understood but I wouldn't want that
20 before the Board as evidence and if it's not going to be,
21 that's fine.

22 MR. SIDNEY SORONOW: Mr. Chairman, just
23 one (1) thing. I -- I mean I appreciate that as with any
24 Board you will try to render your decision quickly.

25 I think it would be helpful to all of

1 these parties -- oops -- I don't want to speak unduly on
2 behalf of Avion but we all are mindful of the fact that
3 you have a Hearing set at a particular date.

4 And obviously whichever party is
5 dissatisfied by your decision is going to want to --
6 likely want to have that addressed in the Court of
7 Appeals. So one would hope that your decision comes
8 forward fairly quickly.

9 I can't impose that on you quite obviously
10 but I just bring that to your attention.

11 THE CHAIRPERSON: We take all these
12 matters seriously, Mr. Soronow, as I'm sure you
13 appreciate and we'll have our decision in due course
14 after we've full considered all the matters that have
15 been raised. Thank you.

16 MR. SIDNEY SORONOW: Thank you.

17 MR. PAUL EDWARDS: Thank you.

18 MR. SIDNEY SORONOW: We are excused?
19 Thank you.

20

21 --- Upon adjourning at 12:53 p.m.

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1 Certified correct,

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8 Cheryl Lavigne

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