

Manitoba Ombudsman

**REPORT UNDER
THE OMBUDSMAN ACT
CASE 2014-0076
TAXICAB BOARD AND MOTOR TRANSPORT BOARD
REPORT ISSUED ON AUGUST 16, 2016**

CASE SUMMARY

In February 2014, our office received a complaint from a rural taxicab operator (the complainant) regarding Winnipeg taxicab drivers who were allegedly operating illegally outside of the City of Winnipeg. The complainant advised our office that he had made complaints to the Motor Transport Board and to the Taxicab Board, however, each board declined to investigate the allegations, being of the view that the other board had jurisdiction over the matter. The Taxicab Board also advised the complainant that unless he provided personal information about the passengers on the allegedly illegal fares, there was not enough evidence to undertake an investigation.

Our investigation revealed that there are gaps with respect to the enforcement of certain regulatory matters concerning the operation of taxicabs and a lack of clarity as to the enforcement responsibilities of each board. With regard to the Taxicab Board's assertion that the documentary evidence the complainant provided to the board was insufficient to undertake an investigation, our office is of the view that the evidence provided a basis to review the matter and come to a conclusion concerning the alleged infraction.

As part of his complaint to our office, the complainant raised concerns regarding the complaint process and unfairness in the regulatory framework for Winnipeg and rural taxicab drivers. Our office further determined that the regulatory framework appears to be inequitable, providing advantages to Winnipeg taxicab drivers over rural taxicab drivers.

As a result we make the following recommendations:

1. The Motor Transport Board and the Taxicab Board should draft a written policy setting out the role of each board with respect to investigations and sanctions, ensuring the policy reflects the boards' respective legislative authority.

2. Where it is possible to determine that a breach of the Highway Traffic Act has occurred based on the documentary evidence (e.g. a fare receipt), the Taxicab Board should not require the person making a complaint to provide personal information about the passenger(s) of the fare.
3. To provide equity with the regulation that exists for Winnipeg taxicab drivers, the Taxicab Board should develop a reciprocal regulation to allow rural taxicab drivers into Winnipeg.
4. The departments of Manitoba Infrastructure and Manitoba Indigenous and Municipal Relations should consider amendments to the Highway Traffic Act and/or the Taxicab Act to bring fairness between Winnipeg and rural taxicab drivers with respect to the ability to carry goods without a passenger.
5. The Taxicab Board should consider amending the Taxicab Regulation to require Winnipeg dispatchers to ask about a passenger's destination where the fare originates outside of Winnipeg and specify that service should be refused based on destination where the origin and destination of the fare are both outside of Winnipeg.

Our office also makes the following suggestions for administrative improvement in this matter:

- The Motor Transport Board and the Taxicab Board should explore options, including technological options, to make Winnipeg's boundaries clear for taxicab drivers, to make the rate change less onerous for drivers and less concerning for passengers, and to enhance the boards' abilities to monitor and enforce the legislative and regulatory framework.
- The Taxicab Board should develop a communications strategy to ensure Winnipeg taxicab drivers in training receive information about the legislative and regulatory framework as it applies to them, and that existing drivers are provided with regular updates.

The Taxicab Board advised it is currently undertaking a review of Winnipeg's taxicab services industry and Manitoba Infrastructure advised it will begin reviewing the Highway Traffic Act and related regulations in the fall of 2016. Our recommendations will be taken into account in any future policy or regulatory considerations that result from the reviews.

OMBUDSMAN JURISDICTION AND ROLE

As set out in section 15 of the Ombudsman Act, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, municipalities, and their officers and employees.

The investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker(s), and any witnesses we determine to be relevant to the case. Administrative investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The ombudsman may make recommendations pursuant to section 36 of the Ombudsman Act if there is finding of maladministration.

In this matter we reviewed the actions of the public bodies against the Highway Traffic Act, the Taxicab Act and the related rules and regulations.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can improve the relationship between government and the public, and reduce administrative complaints.

BACKGROUND

Motor Transport Board

The Motor Transport Board's mandate is to ensure all Manitobans are provided with adequate transportation services at a reasonable cost through the administration of a regulatory system governing motor carriers operating public service vehicles (for example taxis, buses, limousines, etc.) pursuant to the Highway Traffic Act.

As part of its duties, the Motor Transport Board issues certificates authorizing inter-municipal livery operators (i.e. rural taxicabs) to transport passengers outside City of Winnipeg boundaries. In contrast, Winnipeg taxicab drivers are licensed by the Taxicab Board. Pursuant to the Motor Transport Board Exemption of Certain Passenger Public Service Vehicles Order, Winnipeg taxicab drivers are permitted to transport passengers and their property between Winnipeg and points outside Winnipeg without obtaining authorization to provide inter-municipal livery services from the Motor Transport Board:

Exemption

2(2) A person who holds a valid taxicab business licence under The Taxicab Act and under that licence operates a vehicle that is within one of the classes listed in subsection 5(2) and clauses 5(3)(a), (b) and (c) of the Taxicab Regulation, Manitoba Regulation 209/91, is exempt from the necessity of holding a certificate and filing a liability insurance policy with the board for the operation of the vehicle to transport passengers and their property between the City of Winnipeg and points outside Winnipeg.

The Motor Transport Board also sets the tariff rate (rural tariff) that must be charged by all taxicabs, including Winnipeg taxicabs, when transporting passengers outside of Winnipeg. The current¹ rates pursuant to Tariff of Tolls for Transportation of Passengers by Inter-Municipal Liveries Regulation are:

¹ As of the release of this report on August 16, 2016

Round trip

2 The toll for a round trip shall be \$1.25 per km (\$2.00 per mile) from the point of commencement of the trip to its destination and back to the point of commencement.

One-way trip

3 The toll for a one-way trip shall be \$2.11 per km (\$3.38 per mile) from the point of commencement of the trip to its destination.

Waiting time

4 The toll for waiting time shall not exceed \$25.00 per hour and shall be chargeable at the rate of \$6.25 for each period of 15 minutes or part of such period.

Taxicab Board

Within the City of Winnipeg, the Taxicab Board is responsible for ensuring that citizens receive quality taxicab service that meets the public need at reasonable cost through the administration of a system of economic regulation, and enforcing regulations or policies that are in the best interest of public, passenger and driver safety. Among its activities, the Taxicab Board determines the training for taxicab drivers, licenses taxicab drivers and investigates and resolves complaints against taxicab operators and drivers for breaches of regulations and service failures.

The Taxicab Board also sets the tariff rates that must be charged by Winnipeg taxicab drivers when transporting passengers within Winnipeg. Different rates are set for different classes of taxicabs (e.g. standard taxicabs, limousines, handicabs). The current² rates set by Taxicab Regulation for standard taxicabs are:

Fares for standard taxicabs and accessible taxicabs

1 The fare for conveying one to four passengers in a standard taxicab or accessible taxicab is determined as follows:

(a) for the first 72.5 metres or fraction of that distance \$3.50;

(b) for each additional 72.5 metres or fraction of that distance \$0.10;

(c) for each 13.18 seconds of metered waiting time \$0.10;

(d) for travelling to point of call or after discharge of passengers . . no charge.

While the Taxicab Act has no provisions to allow taxicabs authorized by the Motor Transport Board (rural taxicab drivers) to operate within Winnipeg, in practice, the Taxicab Board permits rural taxicab drivers to take fares that originate or terminate in the City of Winnipeg. However,

² As of the release of this report on August 16, 2016

rural taxicab drivers are required to charge the rural tariff set by the Motor Transport Board for their entire trip, even portions that take place within Winnipeg boundaries.

THE COMPLAINT

In a complaint to our office dated February 4, 2014, the complainant (a rural taxicab operator) advised that taxicab drivers licensed by Winnipeg's Taxicab Board (Winnipeg taxicab drivers) were contravening the Highway Traffic Act. The complainant specified that the activities of the Winnipeg taxicab drivers undercut his business in a number of ways, including:

- Winnipeg taxicab drivers are providing point-to-point service that originates and terminates outside City of Winnipeg boundaries;
- Winnipeg taxicab drivers are undercutting the rural tariff rate set by the Motor Transport Board, by charging the lesser Winnipeg rate using their meters and/or charging a flat rate when transporting passengers or property outside City of Winnipeg limits.

Other rural taxicab operators echoed the complainant's concerns to our office. The complainant raised his concerns with the Motor Transport Board and the Taxicab Board on multiple occasions, however ultimately neither board investigated his allegations, each being of the view that it did not have jurisdiction over Winnipeg taxicab drivers operating outside of Winnipeg. At one point it appeared the Taxicab Board would review the matter when the complainant provided a fare receipt as evidence of his allegations, however the board subsequently advised the complainant that it would not investigate unless he also provided personal information about the passenger of the fare.

The complainant also raised a number of concerns with the legislative and regulatory framework for Winnipeg and rural taxicab drivers.

KEY ISSUES

- 1. Which board has jurisdiction over the activities of Winnipeg taxicab drivers when they operate outside the City of Winnipeg?**
- 2. Was the fare receipt a sufficient basis for the Taxicab Board to investigate the complainant's allegation that Winnipeg taxicab drivers are breaching the Highway Traffic Act?**
- 3. Does the legislative and regulatory framework provide an advantage to Winnipeg taxicab drivers over rural taxicab drivers?**

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included the following:

- Review of the information and evidence provided by the complainant;
- Interviews with other rural taxicab operators;
- Interviews with representatives of the Taxicab Board;
- Interviews with representatives of the Motor Transport Board;
- Consultation with the department of Manitoba Infrastructure³;
- Consultation with the department of Manitoba Indigenous and Municipal Relations⁴; and
- Review of relevant legislation, regulations and policy including
 - The Highway Traffic Act;
 - The Taxicab Act;
 - Motor Transport Board Exemption of Certain Passenger Public Service Vehicles Order;
 - Tariff of Tolls for Transportation of Passengers by Inter-Municipal Liveries Regulation;
 - Taxicab Regulation; and
 - Taxicab Board's Procedures for Complaints.

ANALYSIS

1. Which board has jurisdiction over the activities of Winnipeg taxicab drivers when they operate outside the City of Winnipeg?

Upon our office's initial inquiries to the Motor Transport Board and the Taxicab Board, it became apparent that neither board was addressing the complainant's concerns as each board was of the view that the other board had jurisdiction over Winnipeg taxicab drivers operating outside of the City of Winnipeg.

The Motor Transport Board advised that it regulates all taxicabs in the province, except those regulated by the Taxicab Board. As Winnipeg taxicab drivers licensed by the Taxicab Board are exempt from obtaining a certificate from the Motor Transport Board, the Motor Transport Board interpreted this to mean that they do not have jurisdiction over Winnipeg taxicab drivers. The Motor Transport Board was of the view that the Taxicab Board has jurisdiction over the drivers and companies it licences, and was thus responsible for ensuring they comply with relevant rules and regulations, including the Highway Traffic Act.

However, regardless of its jurisdiction, we were advised that the Motor Transport Board takes steps to address complaints about Winnipeg taxicab drivers and companies when they are

³ Manitoba Infrastructure at the time of the complaint.

⁴ Manitoba Municipal Government at the time of the complaint.

brought to its attention. The Motor Transport Board's practice is to send a letter to the driver or the company indicating that they are not in compliance with the requirements of the Highway Traffic Act and providing an explanation of the applicable rules. The letter is copied to the Taxicab Board so that it may follow up with the driver or the company.

The Taxicab Board advised that it was of the view that it has no authority outside the City of Winnipeg. If Winnipeg taxicab drivers are offering point-to-point services outside of Winnipeg or are not charging the rural tariff set by the Motor Transport Board, then the complaint should be made to the Motor Transport Board which can investigate. When the Taxicab Board was notified of a complaint against a Winnipeg taxicab driver or company by the Motor Transport Board, it would not follow up on the complaint because it is outside of its jurisdiction.

In light of the boards' initial contradictory responses to the question of jurisdiction, our office asked the boards to jointly determine which board had jurisdiction over Winnipeg taxicab drivers operating outside of Winnipeg boundaries in a letter dated October 28, 2014. The Motor Transport Board and the Taxicab Board sought legal advice to resolve the issue of jurisdiction.

After a 14-month delay during which the boards sought legal advice, the boards advised our office in a letter dated December 31, 2015:

If a Winnipeg taxicab driver is doing an inter-municipal trip (that is, between municipalities that are outside of the City of Winnipeg) without an IML [inter-municipal livery] certificate, the MTB [Motor Transport Board] would have jurisdiction to discipline the driver under section 300 of the HTA [Highway Traffic Act], or to refer the matter for charges under section 316 of that Act.

However, if the Winnipeg taxicab is exempt under paragraph 2(2) of the Motor Transport Board Exemption of Certain Passenger Public Service Vehicles Order 11212015 ("Exemption Regulation"), and the driver is doing a trip between Winnipeg and a point outside Winnipeg, then the MTB would not generally have jurisdiction. The MTB may have some limited jurisdiction over (a) vehicles of a type that are not covered by the exemption or (b) matters such as the tariff of tolls that are not covered by the exemption.

In general, the TCB [Taxicab Board] has jurisdiction while the cab is operating inside Winnipeg, but not outside. However, if the Winnipeg taxicab breaches a condition of its licence while operating outside Winnipeg (e.g. failure to comply with other applicable provincial laws such as the HTA), it may be possible for the TCB to intervene.

Therefore, it seems the question of jurisdiction is not clear cut. It depends on the Winnipeg taxicab drivers' location and the originating and terminating points of their fare.

The Taxicab Board has jurisdiction over Winnipeg taxicab drivers while they are within Winnipeg boundaries, but not when they are outside of Winnipeg. Nonetheless, the Taxicab Board can intervene if a Winnipeg taxicab driver does not comply with the Highway Traffic Act while outside of Winnipeg.

The Motor Transport Board has jurisdiction under the Highway Traffic Act where taxicab drivers provide point-to-point service outside of Winnipeg (which is not permitted by the Exemption Regulation). When Winnipeg taxicab drivers provide service between Winnipeg and a point outside of Winnipeg as permitted by the Exemption Regulation, the Motor Transport Board's jurisdiction is limited to issues not covered by the regulation. This includes situations where the rural tariff is not charged for portions of a trip outside of Winnipeg.

The lack of clarity around jurisdiction means it is not necessarily clear to which board a complaint about a Winnipeg taxicab driver operating outside of Winnipeg should be made. Consequently, the boards advised our office that they have now agreed that the Taxicab Board will investigate complaints against Winnipeg taxicab drivers operating outside of Winnipeg boundaries in all situations and sanction them if necessary. Similarly, the Motor Transport Board will investigate complaints about rural taxicab operators and sanction them as necessary.

Our office is of the view that the boards' agreement is a positive step. However, our office notes that under the current legislative and regulatory framework, the Motor Transport Board is the board authorized by the Highway Traffic Act to discipline or charge taxicab drivers who contravene the Act by providing point-to-point service outside of Winnipeg or who do not charge the rural tariff on portions of a trip outside of Winnipeg. Consequently, we make the following recommendation:

Recommendation 1

- **The Motor Transport Board and the Taxicab Board should draft a written policy setting out the role of each board with respect to investigations and sanctions, ensuring the policy reflects the boards' respective legislative authority.**

2. Was the fare receipt a sufficient basis for the Taxicab Board to investigate the complainant's allegation that Winnipeg taxicab drivers are breaching the Highway Traffic Act?

The complainant advised our office that, notwithstanding jurisdictional issues, the Taxicab Board would not investigate his complaint about a Winnipeg taxicab driver unless he provided personal information about the passenger to the Taxicab Board. In this instance, the complainant obtained a fare receipt from a trip taken by a Winnipeg taxicab driver that had provided point-to-point service outside of Winnipeg and had not charged the full rural tariff. It is clear that such an action contravenes the Highway Traffic Act. He presented the receipt to the Taxicab Board at a September 19, 2013 meeting between representatives from the Taxicab Board, the Motor Transport Board and rural taxicab operators.

The Taxicab Board sent the complainant a letter dated September 25, 2013, stating that the receipt was not sufficient evidence to proceed with an investigation. The letter advised that the name, phone number and address of the passenger were required in order for the Taxicab board to continue to investigate. The complainant did not believe that the personal information of a passenger was required to proceed with the investigation or that he should be collecting personal information from passengers. Consequently, he refused to provide the requested information.

Our office inquired with the Taxicab Board regarding their requirement for personal information in order to proceed with an investigation. In an interview, the (now former) chief inspector with the Taxicab Board advised our office that he requires the personal information of passengers in order to have a witness for the complaint. The chief inspector explained that in his experience, the Taxicab Board dismisses complaints where there is no passenger willing to attend a hearing.

Nonetheless, the chief inspector explained that he had contacted the company at which the Winnipeg taxicab driver worked and had confirmed that one of its drivers took the fare. The chief inspector advised that based on the fare receipt, it was possible to determine that the passenger had not been charged the full rural tariff for the trip and that the whole trip had taken place outside Winnipeg boundaries. However, he would not proceed with the investigation as the complainant had not provided the requested personal information of the passenger of that trip.

In the letter to our office dated December 31, 2015, the Taxicab Board advised that it had not proceeded with the investigation as the complainant had not provided the personal passenger information requested. In a further letter dated March 8, 2016, the Taxicab Board explained:

When a third party complaint is received, the Taxicab Board requests personal information about the passenger to carry-out the investigation process and to ascertain how the receipt evidence was collected. Having a statement from the passenger may further support the complaint.

Our office acknowledges that having a witness can be helpful and in some instances may be necessary in order to investigate a complaint, for example where an assault or injury is alleged.

Nonetheless, our office has concerns with the Taxicab Board's practice of requiring personal information of passengers in order to investigate complaints from a non-passenger complainant. Our office's understanding is that it is possible to determine from a fare receipt where a passenger was picked up, where they were dropped off, the length of the trip and the tariff charged and therefore determine whether there has been a regulatory infraction. Personal information of passengers does not seem necessary to investigate in circumstances where the complaint is not coming directly from the passenger and is not about the passenger. Further, it is impractical to expect passengers to complain about a Winnipeg taxicab driver's breach of the Highway Traffic Act when the passenger financially benefits from the Winnipeg taxicab driver's actions by paying a lower fare.

Consequently, our office concludes that in this case it was not necessary for the Taxicab Board to require the complainant to provide personal information about passengers in order to investigate his complaint that Winnipeg taxicab drivers are breaching the Highway Traffic Act. The complaint with respect to this point is supported. As a result, we recommend the following:

Recommendation 2

- **Where it is possible to determine that a breach of the Highway Traffic Act has occurred based on the documentary evidence (e.g. a fare receipt), the Taxicab Board should not require the person making a complaint to provide personal information about the passenger(s) of the fare.**

3. Does the regulatory framework provide an advantage to Winnipeg taxicab drivers over rural taxicab drivers?

The complainant raised a number of concerns with the regulatory framework for Winnipeg and rural taxicab drivers.

Uneven playing field

The complainant is of the view that the regulatory framework is biased in favour of Winnipeg taxicab drivers. In the course of our investigation, our office became aware of a number of instances where the regulatory framework appears to be inequitable; providing advantages to Winnipeg taxicab drivers over rural taxicab drivers.

First, pursuant to an exemption under the Highway Traffic Act regulations – the Motor Transport Board Exemption of Certain Passenger Public Service Vehicles Order (“Exemption Regulation”) – Winnipeg taxicab drivers are authorized “to transport passengers and their property between the City of Winnipeg and points outside Winnipeg.” The regulation permits Winnipeg taxicab drivers to take fares that cross Winnipeg boundaries.

However, there is no reciprocal exemption under the Taxicab Act that would permit rural taxicab drivers to take passengers into the City of Winnipeg. Only drivers licensed by the Taxicab Board are permitted to operate a taxicab pursuant to the Taxicab Act:

Taxicab business licence

4(1) *No person shall, through an agent or employee, carry on the business of keeping a taxicab or taxicabs for hire, or hold out or advertise that he or she is carrying on that business, or keep for hire or operate for hire any taxicab, in The City of Winnipeg unless the person holds a taxicab business licence issued by the [Taxicab] board permitting him or her to do so.*

In the December 31, 2015 letter to our office, the Taxicab Board and the Motor Transport Board advised:

Although the Taxicab Act or Regulation does not provide the authority, it has been practice that rural taxis may take fares that originate or terminate in the City of Winnipeg. Both the MTB [Motor Transport Board] and the TCB [Taxicab Board] accept this practice as it is the reciprocal of what TCB regulated vehicles may do.

While both boards may in practice accept that rural taxicab drivers may take trips between Winnipeg and points outside of Winnipeg, the legislation does not permit rural taxicab drivers to do so.

Second, Winnipeg taxicab drivers have the competitive advantage of charging the lesser Winnipeg rate, set by the Taxicab Board, for portions of a trip that take place in Winnipeg whereas rural taxicab drivers must charge the significantly higher rural tariff, set by the Motor

Transport Board, for the entire trip, even when in Winnipeg. This allows Winnipeg taxicab drivers to charge less than rural taxicab drivers for the exact same trip.

The Motor Transport Board and the Taxicab Board advised that:

Consideration is being given to amending the Tariff of Tolls Regulation to establish a separate fare structure for the portions of intermunicipal trips that are within Winnipeg. The new fare would mirror the established rates for a standard taxicab in the Taxicab Regulation, thereby leveling the playing field.

The amendments were registered on April 14, 2016 and the *Tariff of Tolls* now includes a Winnipeg rate for taxicab rural drivers. Our office believes changing the regulation is a positive step towards resolving this inequity.

Third, Winnipeg taxicab drivers are permitted to transport goods without a passenger, while rural taxicab drivers are required to have a passenger. In the letter of December 31, 2015, the boards advised that Winnipeg taxicab drivers are authorized by the Taxicab Act to transport passengers or property. However pursuant to the Highway Traffic Act, a rural taxicab operator's certificate is restricted to the transportation of passengers.

Our office notes that while past practice has allowed Winnipeg taxicab drivers to transport goods between Winnipeg and points outside of Winnipeg, this practice is not specifically authorized by the Exemption Regulation which provides for passengers *and* their property, but is silent as to property without a passenger.

The Motor Transport Board and the Taxicab Board advise that they "will continue to explore enabling all taxicabs to carry goods only." However, they advise that doing so requires changes to the Highway Traffic Act.

In light of the disparities identified above, our office makes the following recommendations:

Recommendation 3

- **To provide equity with the regulation that exists for Winnipeg taxicab drivers, the Taxicab Board should develop a reciprocal regulation to allow rural taxicab drivers into Winnipeg.**

Recommendation 4

- **The departments of Manitoba Infrastructure and Manitoba Indigenous and Municipal Relations should consider amendments to the Highway Traffic Act and/or the Taxicab Act to bring fairness between Winnipeg and rural taxicab drivers with respect to the ability to carry goods without a passenger.**

Trips between Winnipeg and points outside of Winnipeg

The complainant advised our office that Winnipeg taxicab drivers are coming into his area and picking up passengers. He is of the view that taxicab drivers, himself included, must originate

their trips within their own areas: his trips should originate in his area and Winnipeg taxicab drivers' trips should originate in Winnipeg.

In the December 31, 2015 letter, the Taxicab Board and Motor Transport Board advised that Winnipeg taxicab drivers are permitted to take fares between Winnipeg and points outside of Winnipeg pursuant to the Exemption Regulation. The regulation does not specify that the trip must originate within Winnipeg boundaries. Similarly for rural taxicab operators, the certificate granted by the Motor Transport Board does not require trips to originate within the area specified. Rather it states that "all trips must originate and/or terminate" within the area indicated on the certificate.

While taxicab drivers may originate or terminate a trip outside of their area, the boards explained that once a driver has terminated a trip outside their area, they cannot remain outside their area searching for another passenger. However, a driver may arrange to wait for their original passenger and return with them to their area.

The boards further advised that taxicab drivers are not permitted to take point-to-point trips entirely outside their area. At least a portion of any trip taken by a taxicab driver must occur within the boundaries of the area for which they are licensed or have a certificate.

Our office concludes that taxicab drivers are permitted to originate or terminate a trip within their area.

Dispatchers

The complainant advised our office that Winnipeg dispatch companies send Winnipeg taxicab drivers to originate trips at points within his area without verifying whether that the destination is within Winnipeg. This leads to Winnipeg taxicab drivers taking point-to-point trips outside of Winnipeg, contravening the Highway Traffic Act and taking business from the complainant.

In its letter of March 8, 2016, the Taxicab Board advised our office that pursuant to regulations under the Taxicab Act, dispatchers are not supposed to ask passengers where they are going as taxicabs are not permitted to refuse service based on destination. The Taxicab Regulation provides:

Additional prohibitions

27(2) A driver shall not

(b) ask for a passenger's destination until the passenger is seated in the taxicab.

However, the Taxicab Board acknowledged that

In situations where the customer requests a pick up originating outside of Winnipeg then it is reasonable that the dispatch company would ask the customer if their destination is to Winnipeg, and if it is not, then they should advise that the trip is an inter-municipal livery and is not permitted.

Our office recognizes that prohibiting dispatchers from inquiring about a passenger's destination helps ensure that service is not refused based on destination. However in our office's view, the issue would be in the refusal to provide service to the destination, not in the asking about the destination. As a result, our office makes the following recommendation:

Recommendation 5

- **The Taxicab Board should consider amending the Taxicab Regulation to require Winnipeg dispatchers to ask about a passenger's destination where the fare originates outside of Winnipeg and specify that service should be refused based on destination where the origin and destination of the fare are both outside of Winnipeg.**

Legislative and regulatory framework

Based on our investigation, our office has concerns that the current legislative and regulatory framework is impractical for drivers and is difficult for the boards to enforce.

First, the boundaries of Winnipeg are unclear. As explained by the Taxicab Board in its March 8, 2016 letter, "the boundaries between the City of Winnipeg and adjacent municipalities often run down the middle of residential streets. This can make it very difficult for a dispatcher or driver to know the precise boundaries." Knowledge of the boundaries is essential as Winnipeg taxicab drivers must change the tariff they are charging when crossing Winnipeg boundaries. This will also impact rural taxicab drivers should the Motor Transport Board create a Winnipeg tariff for rural operators.

Further, taxicab meters are programmed with only one rate. Winnipeg taxicab drivers' meters are set to the Winnipeg rate while rural drivers' meters are set to the rural tariff. When crossing outside Winnipeg boundaries, a Winnipeg taxicab driver must be shut off his or her meter and calculate the rural tariff manually based on the driver's odometer. The Taxicab Board highlighted the challenges of changing rates with the following example of a customer who is picked up in downtown Winnipeg and taken to Bird's Hill:

The city meter rate will be charged to Emerson Street, and then the rural rate will be charged to Birds Hill. The calculation may be challenging to the driver, and more importantly the customer may become agitated because this procedure may not be expected. Some customers may live within one kilometer of the boundary or even just on the other side of the street of the boundary. The driver would need to calculate the tariff at \$2.11/km for the portion outside of Winnipeg where the City meter rate would not apply.

As noted above, this will also impact rural taxicab drivers should the Motor Transport Board create a Winnipeg tariff for rural operators.

The complainant also raised concerns with our office about the disparity in monitoring and enforcing the legislative and regulatory framework within and outside of Winnipeg. He is of the view that while the Taxicab Board protects its drivers by actively monitoring and ensuring rural

operators do not take fares within the City of Winnipeg, there is no equivalent activity to protect rural taxicab drivers by enforcing compliance with the rural tariff or ensuring that Winnipeg taxicab drivers in rural areas are not providing point-to-point services outside of Winnipeg. The complainant believes that the lack of enforcement has contributed to the increasing number of Winnipeg taxicab drivers operating in his area, which in turn is having a significant detrimental impact on his livelihood.

In an interview with our office, the (now former) secretary of the Motor Transport Board advised our office that it does not have the staff resources to investigate and enforce the regulatory framework with respect to taxicab drivers. In its letter of March 8, 2016, the Taxicab Board acknowledged that compliance with the rural tariff “may prove impossible to enforce.”

Our office is concerned that neither board feels it is capable of enforcing the legislative and regulatory framework for taxicab drivers. If the framework cannot be enforced, then those who contravene the law gain an unfair business advantage over those who comply.

Recognizing that the complexity of the rates and information technology also impact enforcement, our office therefore makes the following suggestion for administrative improvement:

- The Motor Transport Board and the Taxicab Board should explore options, including technological options, to make Winnipeg’s boundaries clear for taxicab drivers, to make the rate change less onerous for drivers and less concerning for passengers, and to enhance the boards’ abilities to monitor and enforce the legislative and regulatory framework.

Communication of legislative and regulatory framework to dispatchers, companies and drivers

The complainant advised our office that on a number of occasions, Winnipeg taxicab drivers, Winnipeg dispatchers and even staff (inspectors) of the Taxicab Board have not been aware of the legislative and regulatory framework, specifically that Winnipeg taxicab drivers cannot take point-to-point trips outside of Winnipeg and that the rural tariff must be charged for portions of a trip occurring outside of Winnipeg boundaries.

Our office inquired with Taxicab Board what actions it was taking to communicate and/or educate dispatchers, companies and drivers of the regulations. In its March 8, 2016 letter, the board advised that it has taken steps to inform dispatchers of the regulatory requirements:

The Taxicab Board (TCB) has sent out a reminder letter to all dispatch companies on October 26, 2015 advising that the legislated tariff rate of \$2.11/km must be charged when a trip crosses outside the City boundary. The letter also reminded them that trips from A to B outside of the City of Winnipeg boundaries are not permitted. The letter also advised companies to ask customers, when they request a trip out of the city, where they are going and if they called their local taxicab service first.

The Taxicab Board also included a copy of the excerpt from the Highway Traffic Act regarding the Tariff of Tolls for Transportation of Passengers by Inter-Municipal Liveries Regulation 46/2001.

On November 9, 2015 The Taxicab Board Compliance staff contacted the two major taxicab dispatch companies, Duffy's Taxicab and Unicity Taxicab, and reminded them again of the rural rate to be charged.

Our office approves of the steps the Taxicab board has taken so far to notify dispatchers of the legislative and regulatory framework. However, our office notes that the Taxicab board has not provided this information directly to drivers. Providing information to dispatchers does not effectively target those Winnipeg taxicab drivers who have been seeking fares outside of Winnipeg, making point-to-point trips outside of Winnipeg and/or failing to charge the rural tariff. Consequently, our office makes the following suggestion for administrative improvement to ensure Winnipeg taxicab drivers are aware of the legislative and regulatory requirements when operating outside of Winnipeg:

- The Taxicab Board should develop a communications strategy to ensure Winnipeg taxicab drivers in training receive information about the legislative and regulatory framework as it applies to them, and that existing drivers are provided with regular updates.

FINDINGS AND RECOMENDATIONS

The lack of clarity around jurisdiction means it is not necessarily clear to which board a complaint about a Winnipeg taxicab driver should be made. Our office is of the view that the boards' agreement that the Taxicab Board will investigate and sanction Winnipeg taxicab drivers and the Motor Transport Board will investigate and sanction rural taxicab drivers is a positive step.

With respect to the complaint process, in our office's view, it was not necessary for the Taxicab Board to require the complainant to provide personal information about passengers in order to investigate his complaint when the documentary evidence was sufficient to establish that a Winnipeg taxicab driver breached the Highway Traffic Act.

Our office concludes that the legislative and regulatory framework provides an unfair advantage to Winnipeg taxicab drivers over rural taxicab drivers and the existing prohibition against dispatchers asking callers for their destination, while well-intentioned, makes it difficult for companies and drivers to ensure that they do not provide point-to-point service outside of Winnipeg. Our office further finds that regulatory framework requiring different tariffs to be charged inside and outside of Winnipeg is impractical for taxicab drivers and difficult, if not impossible, for the Motor Transport Board and the Taxicab Board to enforce. Finally, while the Taxicab Board has communicated the legislative and regulatory framework to dispatchers, more could be done to communicate with existing drivers.

Consequently, Manitoba Ombudsman recommends the following:

1. **The Manitoba Transport Board and the Taxicab Board should draft a written policy setting out the role of each board with respect to investigations and sanctions, ensuring the policy reflects the boards' respective legislative authority.**
2. **Where it is possible to determine that a breach of the Highway Traffic Act has occurred based on the documentary evidence (e.g. a fare receipt), the Taxicab Board should not require the person making a complaint to provide personal information about the passenger(s) of the fare.**
3. **To provide equity with the regulation that exists for Winnipeg taxicab drivers, the Taxicab Board should develop a reciprocal regulation to allow rural taxicab drivers into Winnipeg.**
4. **The departments of Manitoba Infrastructure and Manitoba Indigenous and Municipal Relations should consider amendments to the Highway Traffic Act and/or the Taxicab Act to bring fairness between Winnipeg and rural taxicab drivers with respect to the ability to carry goods without a passenger.**
5. **The Taxicab Board should consider amending the Taxicab Regulation to require Winnipeg dispatchers to ask about a passenger's destination where the fare originates outside of Winnipeg and specify that service should be refused based on destination where the origin and destination of the fare are both outside of Winnipeg.**

In addition, Manitoba Ombudsman makes the following suggestions for administrative improvement:

- **The Motor Transport Board and the Taxicab Board should explore options, including technological options, to make Winnipeg's boundaries clear for taxicab drivers, to make the rate change less onerous for drivers and less concerning for passengers, and to enhance the boards' abilities to monitor and enforce the legislative and regulatory framework.**
- **The Taxicab Board should develop a communications strategy to ensure Winnipeg taxicab drivers in training receive information about the legislative and regulatory framework, and that existing drivers are provided with regular updates.**

RESPONSE TO THE RECOMMENDATIONS

In a letter dated July 27, 2016, the Taxicab Board, the Motor Transport Board, and the departments of Manitoba Infrastructure and of Manitoba Indigenous and Municipal Relations advised:

The TCB is currently in the process of undertaking a comprehensive review of Winnipeg's Taxicab Services Industry which is scheduled to be completed in the late fall of 2016. The recommendations that arise from the Taxicab Services Review will assist the TCB with forming decisions around potential changes to the future regulation of the taxi industry in Winnipeg.

Manitoba Infrastructure will be undertaking a comprehensive review of The Highway Traffic Act and related regulations beginning in the fall of 2016. Therefore, Manitoba Infrastructure and TCB will align the Manitoba Ombudsman's recommendations to any future policy or regulatory considerations that result from the reviews.

Although making changes to the related legislation will not take place until after the reviews are complete, the Boards have taken action and implemented procedures and policy to address the Ombudsman's recommendations.

Recommendation 1

The Motor Transport Board and the Taxicab Board should draft a written policy setting out the role of each board with respect to investigations and sanctions, ensuring the policy reflects the boards' respective legislative authority.

The Taxicab Board and the Motor Transport Board met on November 19, 2015 with our respective Chairpersons to develop process for handling complaints and investigations. Although formal policy is still in development the process is being followed with The Taxicab Board initiating investigation of complaints received against taxicabs licenced under the TCB and the Motor Transport Board investigating complaints they receive against rural operators. The Taxicab Board's complaint process includes following up on receipts that are submitted to the TCB from third parties.

Recommendation 2

Where it is possible to determine that a breach of The Highway Traffic Act has occurred based on the documentary evidence (e.g. a fare receipt), the Taxicab Board should not require the person making a complaint to provide personal information about the passenger(s) of the fare.

In cases where disciplinary action may be recommended to The Taxicab Board by the TCB Compliance officers it will be necessary to obtain personal information to substantiate evidence or have a person appear as a witness at a show cause hearing. The TCB Compliance officers will make this determination during the investigation process.

Recommendation 3

To provide equity with the regulation that exists for Winnipeg taxicab drivers, the Taxicab Board should develop a reciprocal regulation to allow rural taxicab drivers into Winnipeg.

Amending the Taxicab Regulation is out of scope at this time as the TCB is undertaking a Review of Winnipeg's Taxicab Services which is expected to be complete in the late fall of 2016.

The TCB will be reviewing regulatory requirements based on findings in the Review and will consider making equity regulation at that time. In the meantime a reciprocal agreement exists and the TCB will move towards posting this on its website.

Recommendation 4

The departments of Manitoba Infrastructure and Manitoba Indigenous and Municipal Relations should consider amendments to The Highway Traffic Act and/or The Taxicab Act to bring fairness between Winnipeg and rural taxicab drivers with respect to the ability to carry goods without a passenger.

The Taxicab Act provides for the carriage of a person or persons or property by or in a taxicab. The Boards will continue to explore the legalities and licencing requirements around the carriage of property by a taxicabs to bring fairness between Winnipeg and rural Taxicabs. This will be looked at further after the Review of Winnipeg's Taxicab Services is complete.

Recommendation 5

The Taxicab Board should consider amending the Taxicab Regulation to require Winnipeg dispatchers to ask about a passenger's destination where the fare originates outside of Winnipeg and specify that service should be refused based on destination where the origin and destination of the fare are both outside of Winnipeg.

Although the regulation has not been amended, the Taxicab Board (TCB) has sent out a number of notices and letters to all dispatch companies advising them of the legislated tariff outside of city limits. On August 18,2015 the Taxicab Board Office faxed and emailed Information Circular (IC0007-2015) reminding taxis of the legislated tariff that must be charged when a trip crosses the city boundaries. The current legislated tariff is \$2.11 per kilometer and that this is considered an inter-municipal livery trip.

On October 26, 2015 the Taxicab Board sent another letter advising that the legislated tariff rate of \$2.11/km must be charged when a trip crosses outside the City boundary. The letter also reminded them that trips from A to B outside of the City of Winnipeg boundaries are not permitted. The letter advised companies to ask customers, when they request a trip out of the city, where they are going and if they called their local taxicab service first. The Taxicab Board also included a copy of the excerpt from the Highway Traffic Act regarding the Tariff of Tolls for Transportation of Passengers by Inter-Municipal Liveries Regulation 46/2001.

On November 9,2015 the Taxicab Board Compliance staff contacted the two major taxicab dispatch companies, Duffy's Taxicab and Unicity Taxicab, and reminded them again of the rural rate to be charged.

On June 29, 2016 the Taxicab Board Office faxed and emailed another Information Circular (IC0004- 2016) to all dispatch companies and mailed the Information Circular to all 2,374 current Taxicab Drivers in Winnipeg regarding the regulations on taxicab trips outside of Winnipeg with a map of the city of Winnipeg including the boundaries of city limits. Due to the potential mail strike the letters were sent on July 14, 2016.

Ombudsman also made the following suggestions for administrative improvement in this matter:

The Motor Transport Board and the Taxicab Board should explore options, including technological options, to make Winnipeg's boundaries clear for taxicab drivers, to make the rate change less onerous for drivers and less concerning for passengers, and to enhance the boards' abilities to monitor and enforce the legislative and regulatory framework.

The TCB's procedures include posting notices that are sent to industry on our Website which includes the notice to all dispatch companies and drivers advising of the rural rates and city boundaries. In addition TCB will post the map of city boundaries on our Website for ease of reference

The Taxicab Board should develop a communications strategy to ensure Winnipeg taxicab drivers in training receive information about the legislative and regulatory framework as it applies to them, and that existing drivers are provided with regular updates.

The Taxicab driver training program teaches drivers the regulations and requirements of operating a taxi. The Taxicab Board will provide Continuing Education, St James Collegiate with a map of the city boundaries and the notice that was sent in July 4 and add it to the training material.

We sincerely appreciate your recommendations and aim to have clear and well balanced policies.

Our office appreciates the boards' and departments' positive response to Recommendations 1, 3, 4 and 5 and the suggestions for administrative improvement.

With respect to Recommendation 2, our office requested further clarification on the response and have subsequently been advised that the Taxicab Board will, as part of its current review process, also examine the circumstances under which personal information from witnesses is required, collected and maintained as part of its complaints process.

We will follow up on all the recommendations at the end of the year when it is anticipated that the reviews will be complete.

MANITOBA OMBUDSMAN