

**WCAT Decision Number:** **WCAT-2012-00501**  
**WCAT Decision Date:** **February 21, 2012**

**Panel:** Herb Morton, Vice Chair

**WCAT Reference Number:** 100843-A

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Section 257 Determination  
In the Supreme Court of British Columbia  
Vancouver Registry No. M093646  
Darshan Singh also known as Darshan Singh Valasra v. Daljit Singh Kalra

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**Applicant:** Daljit Singh Kalra  
(the “defendant”)

**Respondent:** Darshan Singh also known as  
Darshan Singh Valasra  
(the “plaintiff”)

**Interested Person:** Apple Express Courier Ltd.

**Representatives:**

For Applicant: Sandro Laudadio  
Litigation Department  
Insurance Corporation of British Columbia

For Respondent: Charles D. Jago  
Simpson Thomas & Associates

For Interested Person: Kirsten Hume  
Harris & Company LLP

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## **Introduction**

- [1] The plaintiff, Darshan Singh also known as Darshan Singh Valasra, was injured in a motor vehicle accident on March 10, 2008. The accident occurred at approximately 3:00 p.m. on Miller Road near Jericho Road in Richmond, B.C. Four vehicles travelling west on Miller Road were involved in the accident, involving rear end collisions. The plaintiff was driving a taxi for Royal City Taxi Ltd. (Royal City), and was driving to the Vancouver International Airport (YVR) to deliver a package. The defendant, Daljit Singh Kalra (Kalra), was a courier driver for Apple Express Courier Ltd. Kalra was going to pick up a package at or near YVR.
- [2] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury, or death. This application was initiated by counsel for the defendant on April 14, 2010. Transcripts have been provided of the examinations for discovery of the plaintiff on January 14, 2010 and May 27, 2010, and of the defendant on May 27, 2010. Affidavits have been provided by the plaintiff (August 18 and 24, 2011), and by the defendant (October 12, 2011). Royal City is not participating in this application, although invited to do so.
- [3] Written submissions have been provided by the parties to the legal action, and by Apple Express Courier Ltd. as an interested person. The background facts are not in dispute, and this application does not involve any significant issue of credibility. I find that this application can be properly considered on the basis of the written evidence and submissions, without an oral hearing.

## **Issue(s)**

- [4] Determinations are requested concerning the status of the parties to the legal action, at the time of the March 10, 2008 motor vehicle accident.

## **Jurisdiction**

- [5] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). WCAT is not bound by legal precedent (section 250(1)). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Workers' Compensation Board, operating as WorkSafeBC (Board or WCB), that is applicable (section 250(2)). Section 254(c) provides that WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

## **Status of the plaintiff, Darshan Singh also known as Darshan Singh Valasra**

- [6] The plaintiff submitted an application for compensation concerning the March 10, 2008 accident. He advised that he had been injured in a motor vehicle accident at 3:00 p.m. on that date. By memorandum dated March 26, 2008, a claims analyst, Assessment Department of the Board, commented:

Confirmed per call with Susie(Office Manager - Royal City Taxi) ... that the claimant was an owner of the cab at the time of the injury.

Mr Valasra who goes by the last name Singh is considered to [be] a self employed / independent operator for Assessment purposes and as he does not maintain his own Workers' Compensation Board registration with pop [Personal Optional Protection coverage] in effect , rejection is recommended.

[all quotations are reproduced as written, except as marked]

- [7] The plaintiff's claim was rejected by a client services representative of the Board on the basis that he did not have workers' compensation coverage. Item #18.1 of WCAT's *Manual of Rules of Practice and Procedure* provides that in a section 257 application, WCAT will consider all of the evidence and argument afresh regardless of a prior decision by a Board officer.
- [8] The plaintiff gave evidence at an examination for discovery on January 14, 2010. At the time of the accident, he was delivering a package to YVR (Q 9). Royal City charged a dispatch fee (Q 274). The expenses of the company were shared by the owner/operators (Q 275). The plaintiff's responsibility for expenses depended on the number of shares he held (Q 279 to 281). He remained responsible for his share of the expenses even when he was not working as a driver (Q 281). He was entitled to the payment of dividends from Royal City, if there were any (Q 318).

- [9] The plaintiff gave further evidence at a continuation of his examination for discovery on May 27, 2010. At the time of the accident, he was driving a taxi with the markings of Royal City (Q 353). He was the owner of the taxi (Q 354) and a shareholder in the company (Q 355). The taxi was a Toyota Camry Hybrid (Q 359). The plaintiff purchased the Camry as a used vehicle from a dealer in New Westminster (Q 360 to 361). He took out a loan from the bank to purchase the car (Q 367). The plaintiff paid to have the car painted with the Royal City colours (Q 369 to 371). The plaintiff also paid to have the dispatch equipment (radio and computer) installed in the car (Q 373 to 374).
- [10] The plaintiff paid for fuel, and for the expenses of maintenance and repair on the taxi (Q 450 to 452, 459). He could buy gas from any gas station (Q 458 to 460). The plaintiff paid the expenses for car insurance, car wash, and radio (496, 500), and commercial vehicle inspection every six months (Q 505 to 507). The plaintiff also paid a share of the expense of obtaining a business licence for Royal City each year (Q 509 to 514).
- [11] The plaintiff purchased two shares, one night share and one day share (Q 378 to 379). He sometimes worked for 10 hours a day, and other times he worked for 12 hours a day (Q 382). Royal City did not care how many hours he worked, but he could not work more than 15 hours a day (Q 384). There was no dress code (Q 385 to 386).
- [12] The plaintiff received almost all of his calls from the Royal City dispatch, but could get some “flags” too (Q 387). Sometimes he waited at the SkyTrain stop for people coming out that needed a taxi (Q 388 to 389). The calls from Royal City came as a text message through the computer (Q 395 to 396). A taxi driver could not refuse a call unless there was a specific reason such as the passenger was too drunk or otherwise undesirable (Q 393). A taxi driver could be sent home for refusing a dispatch (Q 398). The Royal City manager had the power to suspend a driver for bad conduct (Q 403).
- [13] The plaintiff was required to provide his trip sheets to Royal City (Q 416, 418). A driver could be suspended for not keeping trip sheets (Q 418).
- [14] As the plaintiff held two shares in Royal City, he would receive a share of any profit or loss by Royal City (Q 423). The plaintiff had his own GST (Goods and Services tax) number (Q 435 to 437). Credit card receipts were provided to Royal City, which deducted amounts payable to it and then paid the balance to the plaintiff (Q 440). The plaintiff retained any cash receipts (Q 441 to 442), which were recorded in the trip sheets (Q 444). The plaintiff was responsible for paying his own income taxes (Q 445).
- [15] With respect to the other drivers of his taxi, the plaintiff stated (Q 528):

Q Who found these drivers?

A I'm not sure. Sometimes the company find them, and if they can't find it then if I know somebody I'll send them.

[16] At Q 530, the plaintiff stated that if another driver was driving the taxi, the driver would make a lease payment:

...The driver who drives the car, he makes a lease payment, and every night or every day he puts that lease payment in the envelope and gives it to the company.

[17] The plaintiff did not have to make any lease payments (Q 532).

[18] By letter dated April 13, 2010, Suzy Bhaskar, accountant, Royal City, stated:

Please be advised that Darshan Singh is not an employee of Royal City Taxi Ltd., but is a shareholder. Therefore we have no employment records for him. He is self employed and would have filed accordingly on his T1 Tax Return.

[19] The plaintiff provided further particulars in his affidavit of August 18, 2011, which attached copies of supporting documentation. He purchased his vehicle (the 2007 Toyota Camry Hybrid which was involved in the March 10, 2008 accident) from Key West Ford Sales on December 11, 2007 for \$31,519.44. He took out a loan from the TD Bank Financial Group for this purchase. On or about May 15, 2005, he purchased a share in Royal City, with certificate number A-284, at a cost of \$110,000.00. This share allowed him to operate the vehicle as a Royal City taxi during the day shift. On or about April 25, 2006, he purchased a second share in Royal City, with certificate number A-309, at a cost of \$95,000.00. This allowed him to operate the vehicle as a Royal City taxi during the night shift. The plaintiff paid various fees to operate his vehicle as a Royal City taxi, including a dispatch fee of \$500.00 per month, per share, employment insurance for the lessee of the vehicle, and payments for vehicle insurance. A copy has been provided of the May 31, 1991 Shareholders' Agreement with Royal City.

[20] In a further affidavit on August 24, 2011, the plaintiff advised that in order to finance his purchase of a day and night share from Royal City, he had to take out a mortgage and obtain lines of credit from financial institutions. He provided particulars of these financial arrangements, and the applicable interest rates. He further advised that he was registered as the employer of the lessee of his taxi cab (but has not provided an account number to show he is registered as an employer with the Board).

[21] The plaintiff's initial cost to purchase the Camry, and to buy two shares in Royal City, was approximately \$236,500.00. The owner's certificate of insurance and vehicle registration showed that the Camry was held in the name of Royal City.

[22] The bylaws of the City of New Westminster are publicly accessible on its website.<sup>1</sup> Commercial Vehicle Bylaw No. 5789 requires every taxi driver to maintain trip sheets and deposit these with the taxi licensee at the end of each shift. Section 15(1) of the bylaw provides:

15. DAILY RECORDS

(1) **Every driver of a taxi shall keep a daily record of all trips made by him.** The record must contain the following information:

- (a) the date, time, origin and destination of each trip;
- (b) the driver's name and address;
- (c) the Provincial licence number of the taxi; and
- (d) the odometer reading at the start and finish of the driver's shift.

(2) **The driver shall deposit the record with the taxi licensee at the end of his shift or as soon as possible thereafter.**

(3) The taxi licensee shall check the driver's daily trip records and shall require that each trip be properly recorded and legible before accepting it from the driver.

(4) **The records referred to in subsection (1) and (2) shall be kept by the taxi licensee for a period of at least six months,** and during that time shall be produced for inspection at any time on demand by the Chief Constable or the Inspector.

[emphasis added]

[23] Similar bylaws requiring taxi companies to collect trip sheets on a daily basis and to maintain such records for at least six months apply in Richmond<sup>2</sup> (Vehicle for Hire Regulation, Bylaw No. 6900, sections 3.3.1(d) and 3.2.1(b)), Vancouver<sup>3</sup> (Vehicles for Hire By-Law No. 6066, section 23(14) to (17)) and Burnaby<sup>4</sup> (Bylaw No. 12658, Burnaby Cab Regulation Bylaw 2009, section 13(6)).

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<sup>1</sup>[http://www.newwestcity.ca/city\\_hall/bylaws.php#C](http://www.newwestcity.ca/city_hall/bylaws.php#C)

<sup>2</sup> <http://www.richmond.ca/cityhall/bylaws/chapter.htm#>

<sup>3</sup> [http://app.vancouver.ca/bylaw\\_net/](http://app.vancouver.ca/bylaw_net/)

<sup>4</sup> <http://www.burnaby.ca/Our-City-Hall/Bylaws.html>

[24] Section 12 of the City of New Westminster Commercial Vehicle Bylaw No. 5789 also provided:

12. SERVICE

- (1) Every licensee and driver of a taxi shall accommodate the persons who desire his service in the order of their application, and if a taxi is not available to give the desired service within a reasonable time, then the applicant shall be informed.
- (2) No licensee or driver of a taxi shall refuse or neglect to convey any orderly person or persons upon request in the City unless previously engaged or unable or prohibited by the provisions of this Bylaw.
- (3) No driver of a taxi shall convey any person or persons other than the persons first engaging the taxi. The carrying of passengers for separate fares is prohibited.

[25] Section 14(2) of the City of New Westminster Commercial Vehicle Bylaw No. 578 further provided:

- (2) Every driver of any taxi shall:
  - (a) both in dress and deportment give no cause for offense;

[26] The defendant submits that the plaintiff had two distinct roles in his relationship with Royal City: that of a shareholder, and that of a taxi driver. The defendant submits that in this latter role the plaintiff was a worker. The defendant submits that the plaintiff did not possess any rights of ownership in the vehicle itself. The defendant submits that the plaintiff was essentially an employee of Royal City for the following reasons:

- a) The services he performed were primarily in the nature of labour;
- b) He was required to account for his cash revenue by maintaining trip sheets;
- c) All credit card revenues were payable to the company and subject to later adjustment;
- d) He was required to pick up all fares, unless "undesireables", referred to him by the dispatcher, on pain of suspension;
- e) The management of Royal Taxi had the right to discipline him for bad conduct or customer complaints, with sanctions ranging from periodic suspension to outright termination;
- f) Once suspended, the plaintiff was not permitted to operate the vehicle at all;

- g) Royal City Taxi held all applicable licences related to the operation of the vehicle as a taxi cab, save for the plaintiff's personal driver's licence;
- h) The maintenance of the vehicle was co-ordinated by Royal City Taxi, including washing, inspection and repairs;
- i) The remuneration arrangement between Royal City Taxi and the plaintiff consisted of a monthly adjustment of revenues from the use of the taxi set off against a monthly dispatch fee, insurance and sundry other expenses levied apparently at the option of the company.
- j) While the remuneration arrangement could have theoretically resulted in a loss, in practice it never did so;
- k) If the plaintiff fell ill and was unable to work, Royal City Taxi had primary responsibility to find a replacement driver.

[27] The defendant cites *WCAT-2007-00194, Cheung v. Vilkas*, application for reconsideration denied, *WCAT-2009-03041*. That case concerned a taxi driver who was injured in a motor vehicle accident on January 6, 2003. In August 2002, prior to the accident, the plaintiff sold his share in Vancouver Taxi Ltd., including his 50% share in cab No. 18, to Nahal. After that, the plaintiff worked as a "self-employed lease operator/taxi driver" by leasing cab No. 18 from Nahal. In that case, the WCAT panel found it significant that the daily trip sheets had to be submitted to the taxi company. The WCAT panel further reasoned:

I also find that there is merit to the position of defendants' counsel that the varying lease rate effectively imposed controls on the amount of income the plaintiff could generate from driving. The fact that the plaintiff was required to work specific days of the week adds to the degree of control exercised by Vancouver Taxi Ltd. over the amount of income that he could generate in a one-week period. As a result of these mechanisms, the plaintiff's ability to make a profit or loss was constrained.

[28] The WCAT panel found that the plaintiff was a worker within the meaning of Part 1 of the Act.

[29] The plaintiff cites a 1999 Report to the Minister of Transportation and Highways, entitled "A Study of the Taxi Industry in British Columbia."<sup>5</sup> The Taxi Study Panel, chaired by Stan Lanyon, described the common company structures in the British Columbia taxi industry as follows at page 24:

The larger taxi companies in the province operate under a shareholder structure. The company owns the motor carrier authority, or fleet license, with its designated number of plates, and runs the dispatch service. A

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<sup>5</sup> [http://www.th.gov.bc.ca/publications/reports\\_and\\_studies/taxi/taxi.pdf](http://www.th.gov.bc.ca/publications/reports_and_studies/taxi/taxi.pdf)



single company may have authority to operate 100 cars or more under its license, but those cars are rarely owned by the company. **Vehicles may be registered in the name of the company, but are beneficially owned by the individual operators.** Those beneficial owners are shareholders in the company. The shareholders elect a Board of Directors who, in turn, hire the general manager who is responsible for hiring the dispatchers. Shares in the company are not formally traded in a share market such as the Vancouver Stock Exchange, but are actively traded in a private market.

Notwithstanding the fact that the MCC [Motor Carrier Commission] is required to approve all assignments and transfers, the Commission's approval is not sought, and in fact, the Commission receives no notice that the sale of a share in a license has taken place. **Most commonly, each licensed vehicle supports two shareholders who each own a half-share. The price of shares is market-driven and therefore varies widely depending on supply and demand.** The value in the Lower Mainland, for example, can range anywhere from a low of \$30,000 in outlying areas to as much as \$160,000 for a half share in the restrictive Vancouver market. In smaller centres in other parts of B.C., a license for one taxi might cost as little as \$6,000 to \$7,000.

In addition to shareholders, the company may also lease its plates to an owner-operator who independently owns a vehicle. Owner-operators pay a set lease fee monthly as well as dispatch fees to the company. They also have sole responsibility for all incidental costs related to operating their vehicle including insurance, maintenance, fuel and repairs. Generally these owner-operators pay lease fees from \$850 to \$1,400 per month and dispatch fees ranging from \$525 to \$950 per month....

[30] At the time of the March 10, 2008 accident, Board Practice Directive 1-1-3(B), Taxi Shift Lease Operators, effective October 1, 2003, provided, in part:

Shift lease operators in the taxi industry are defined as those who lease a taxi from a firm for a specific period of time for a flat fee per shift. A shift lease operator will be considered an independent operator only if:

- There is a lease arrangement,
- There is no sharing of revenue between the lessee and the owner,
- The lessee is in a profit/loss situation, and

- The owner exerts no more than minimum control of the lessee's operations beyond license and/or regulation restrictions. In such cases, the WCB considers shift lease operators to be operating a business existence independent of the lessors and are therefore independent firms, are responsible for their own WCB coverage, and must register with the WCB if they have workers.

[31] The plaintiff was not a shift lease operator, as he had purchased both the vehicle and the shares for the day shift and night shift use of the vehicle as a taxi for Royal City.

[32] The plaintiff cites the decision by the Federal Court of Appeal in *Yellow Cab Co. v. Canada (Minister of National Revenue)*, [2002] F.C.J. No. 1062, 2002 FCA 294, concerning the status of certain taxi operators under the *Employment Insurance Act*. The decision concerned several lease operators, and one owner operator (Rajinder Matharu). In a majority decision, the Federal Court of Appeal reasoned, in part:

**30** As Major J. stated in *Sagaz*, "the relative weight of each [of the above factors] will depend on the particular facts and circumstances of the case". On our facts, I consider that the chance of profit, the relative degree of financial risk and the ability of the lease-operators to "operate their own business" to be the most important. These factors all militate against a finding that the lease-operators are employees of Yellow Cab.

**31** Referring back to the central question articulated by Major J. in *Sagaz*, I conclude that the lease-operators are in business on their own account. I also find that Hamlyn J. erred in considering only the factor of control to the exclusion of other relevant factors. The lease-operators are in the business of providing taxicabs to the public and therefore are the operators of the taxicab business within the meaning of s. 6(e). Meanwhile, Yellow Cab is in the business of providing administrative services to the taxicab business including providing taxicab support services in the form of dispatching, bookkeeping, branding and marketing.

**32** Given that I have concluded that the lease-operators are in business on their own account, Matharu must also be so. After all, the only distinctions between Matharu and the lease-operators favour the conclusion that Matharu is an independent operator. On the issue of ownership, Matharu owns shares of Yellow Cab, rights to a license issued by the City of Vancouver to Yellow Cab, rights to the permit issued by the province of British Columbia to Yellow Cab and he owns his right to the exclusive use of his taxicab for half a day. Other factors such as control, chance of profit, risk of loss, and ability to hire helpers weigh the same as with the lease-operators.

[emphasis added]

- [33] The plaintiff also cites *WCAT-2011-00844, Sekhon v. Sekachyov et al.*, which took into account the Federal Court of Appeal decision in *Yellow Cab*. The plaintiff in that case, who was driving a taxi for Yellow Cab Company Ltd., had purchased a half-day interest in a taxi for \$304,000.00. The plaintiff was registered as an employer with the Board. *WCAT-2011-00844* concluded as follows, at paragraphs 60 to 62:

**I am in agreement with the plaintiff's submission regarding the significance of the plaintiff's investment in the half-day interest in a taxi. This involved a very significant expenditure (\$304,000.00), which required the plaintiff to obtain a long-term bank loan. The plaintiff was therefore subject to a significant risk of profit or loss, as his level of return on his investment was subject to all the expenses associated with the operation of the taxi.** I agree with the applicants that the plaintiff appears to have been unsophisticated and seemingly lacking in appreciation for the legal ramifications of the various arrangements he had entered into, and that he was in a state of considerable dependence on Yellow Cab in regard to these arrangements. I consider, however, that the evidence points to the plaintiff as having been an unsophisticated owner/investor, rather than a worker within the meaning of Part 1 of the Act.

I further consider that the plaintiff's circumstances are very similar to those of Rajinder Matharu, the owner-operator whose status was addressed by the Federal Court of Appeal in the *Yellow Cab* case, *supra*. As noted by the plaintiff, WCAT has also found certain shift lease operators for Yellow Cab to be independent. While WCAT is not bound by its prior decisions or by legal precedent, such decisions may provide useful guidance. As well, consistency in decision-making is generally desirable, although it is always necessary to consider whether there are good reasons for taking a different approach.

I agree with the reasoning of the Federal Court of Appeal in its finding that if the lease-operators are in business on their own account, the owner-operator must also be so. **The significant distinction between an owner-operator and a lease-operator (involving the investment of the owner-operator, and receipt of dividend income from Yellow Cab) provides additional strong support for a conclusion that the owner-operator is independent.**

[emphasis added]

[34] The plaintiff cites *WCAT-2009-01781/01782, Rahman v. Wahl et al.* That decision reasoned, at paragraph 87:

The submissions of the applicants provide a thorough analysis regarding the factors showing control on the part of Yellow Cab. These arguments have considerable force. At the same time, however, many of these factors stem, directly or indirectly, from various regulatory requirements associated with being licensed to operate a taxi business. On balance, I consider that the evidence shows that the plaintiff existed as a business enterprise independent of Yellow Cab, notwithstanding the extent of Yellow Cab's controls over his operations. Key factors in this conclusion are that the plaintiff:

- invested capital in purchasing the vehicle and outfitting it as a taxi;
- was not engaged in revenue-sharing with Yellow Cab;
- ran the risk of profit or loss;
- remained liable for the costs relating to the taxi lease even if he could no longer drive the taxi; and,
- accepted the responsibilities of an employer in respect of registering with the Board and paying assessment premiums (and other statutory deductions) in relation to the earnings of his drivers.

[35] The plaintiff cites two published Appeal Division decisions. *Appeal Division Decision #92-1416*, "Shift Lease Operator (No. 1)," 9 W.C.R. 595, *Armstrong v. Brar*, concluded that a taxicab shift lease operator was an independent operator and not an employee, even though he was subject to a "fairly long list of rules and regulations" by the taxi company. In that case, the shift-lease operator made the decisions about the hours he worked, the fares he took, the days he took off, and where to buy his fuel. In that decision, the Appeal Division panel reasoned at page 597:

There are factors which show some control by Bonny's Taxi Ltd. These include the right to discipline operators in certain situations and the fact that Mr. Gill would terminate the lease of any driver if that was recommended by Bonny's Taxi Ltd. However, we are satisfied that most of the evidence supports the conclusion that Mr. Armstrong was an independent operator, or shift lease operator, and not an employee of Bonny's Taxi Ltd. or Mr. Gill.

[36] In *Appeal Division Decision #93-0349*, “Shift Lease Operator (No. 2),” 9 W.C.R. 713, the taxi driver was also found to be an independent operator. He leased the taxi for a flat fee, there was no splitting of revenue, and either party could terminate the lease. The decision noted the driver was subject to some control and possible suspension by the taxi company. The cab was owned and licensed by the taxi company. He was referred to as a “representative” of the company. In favour of finding he was independent, the decision noted the driver chose his days and hours of work, where he would work, whether he would use the dispatch system, and what fares he would take. If he operated under the dispatch system, there were rules about what fares he must take in priority to other fares. Regarding the controls, many were not imposed by the taxi company, but by the municipalities, airport authorities, and police in the areas in which the taxi cabs operate. In the end, the panel found the flat lease fee was a significant factor. It was the driver who “bore the risk of loss and profit.” He was an independent operator, not a worker of the taxi company. The Appeal Division panel reasoned at page 715:

Weighing the various factors and policy considerations, I find the factor which tips the overall balance here is the control of the money. The lease was for a flat fee. The defendant paid the same fee whether he had a good or bad day. He bore the risk of loss and profit. There was no attempt by Richmond Cabs Ltd. to control the defendant Fu’s money. He did not give them all of his fares for the day and get his share back. He just paid the flat fee. The customers paid the defendant Fu directly. He did not have to account to Richmond Cabs Ltd. for that money. He paid his business expenses, including the fee for the taxi, from that money and kept whatever remained. He would have to report his gross income to Revenue Canada and pay the appropriate amount in taxes at the proper times. Similarly, if he wanted to have W.C.B. coverage, he could determine the appropriate level of coverage and pay the assessment as a business expense.

This is not like the situation where a company has control of the money, or pays the worker at an agreed rate, or splits the revenue as in Decision No. 32. In such situations, the company knows the person’s earnings and is in the best position to make the deductions and pay the W.C.B. assessments. When the company has no control over the money and no fixed share in the money, it is not in the best position to be made responsible for W.C.B. coverage and assessments.

Thus, although some factors here point to an employment relationship, I find that an essential element of control was missing from this relationship and the defendant Fu was more like an independent operator than a worker. Financially his business was separate from that of Richmond Cabs Ltd., and Richmond Cabs Ltd. did not otherwise exercise sufficient control over his independence to create an employment relationship.

[37] By memorandum dated November 15, 2010, a research and evaluation analyst, Audit and Assessment Department of the Board, advised that Royal City, account number 060706, had been registered with the Board since at least 1968. No registration with the Board was identified in the name of the plaintiff.

[38] At the time of the accident on March 10, 2008, the policies in the *Assessment Manual* included the following:

**(a) General principles**

In distinguishing an employment relationship from one between independent firms, there is no single test that can be consistently applied.

...

The major test, which largely encompasses these factors, is whether the individual doing the work exists as a business enterprise independently of the person or entity for whom the work is done.

No business organization is completely independent of all others. It is a question of degree whether a party to a contract has a sufficient amount of independence to warrant registration as an employer. Many small parties may only contract with one or two large firms over a period of time. Yet they are often independent of the person with whom they are contracting in significant respects. For example, they must seek out and bid for their own contracts, keep their own books and records, make income tax, unemployment insurance and Canada Pension Plan deductions. They also retain the right to hire and fire their own workers and exercise control over the work performed by their workers. These factors must be considered.

Some regard must also be paid to the structure and customs of the particular industry involved. Where an industry makes much use of the contracting out of work, this should be recognized as a factor in considering applications for registration as employers by parties to contracts in those industries.

[39] I have considered the factors set out in policy at AP1-1-3 as follows:

- *whether the services to be performed are essentially services of labour*

[40] The plaintiff provided labour in driving a taxi.

- *the degree of control exercised over the individual doing the work by the person or entity for whom the work is done*

[41] Royal City exercised a certain degree of control over the plaintiff's activities as a driver. However, these controls (such as the requirement to submit trip sheets) appear to have been largely required by the authorities in the areas in which Royal City operated rather than being imposed by Royal City.

- *whether the individual doing the work might make a profit or loss*

[42] The plaintiff was subject to making a profit or loss, as his net income from the taxi was only determined after all the expenses relating to the operation of the taxi, and administration fees charged by Royal City, were deducted. The plaintiff also bore the financing costs associated with his purchase of the vehicle and two shares (involving both a bank loan and mortgage). This factor favours a finding of independence.

- *whether the individual doing the work or the person or entity for whom the work is done provides the major equipment*

[43] The plaintiff's initial cost to purchase the Camry was \$31,519.44. The owner's certificate of insurance and vehicle registration showed that the Camry was held in the name of Royal City. I find from this evidence that the plaintiff was the beneficial owner, and Royal City was the legal owner, of the vehicle. I further infer that the insurance was purchased by Royal City, but the plaintiff's share of this cost was borne by him. The plaintiff also paid the expenses of outfitting the vehicle as a taxi, and the related expenses of fuel, maintenance, and repairs. This factor favours a finding of independence.

- *if the business enterprise is subject to regulatory licensing, who is the licensee*

[44] Royal City was the primary licensee. However, the plaintiff had his own GST number.

- *whether the terms of the contract are normal or expected for a contract between independent contractors*

[45] The plaintiff was not personally required to work any specified number of hours in driving the taxi. The requirement that the plaintiff make a substantial investment in the company in order to purchase the right to operate the taxi during the day and night shifts, and his liability/eligibility for a share of the expenses/dividends of Royal City, are inconsistent with a finding that he was a worker. These terms of the contract are indicative of a contract between independent contractors.

- *who is best able to fulfill the prevention and other obligations of an employer under the Act*

[46] I consider that Royal City would be in the best position to fulfill these functions, given its centralized administration and ability to discipline.

- *whether the individual doing the work engages continually and indefinitely for one person or works intermittently and for different persons*

[47] The plaintiff did not work for any other taxi company, but he was also not obliged to work as a driver for Royal City. I consider that this factor is neutral or favours a finding of independence.

- *whether the individual doing the work is able or required to hire other persons.*

[48] The plaintiff's evidence was that either Royal City or he would arrange for another driver as required.

[49] The facts that the plaintiff took out a bank loan and mortgage to purchase the Camry and two shares in the taxi company, that he was required to make substantial monthly payments to Royal City which did not depend on his revenue, that he received dividends (or was liable for a share of any shortfall) from Royal City, and that he was not obliged to drive the taxi personally, are all inconsistent with a conclusion that the plaintiff was a worker. The evidence shows that the plaintiff bore a substantial risk of profit and loss. To the extent that Royal City imposed rules on the plaintiff that compromised his independence, I consider that these were largely required by regulatory requirements and are outweighed by the other evidence showing that he existed as a separate business enterprise. I consider that the reasoning in *WCAT-2011-00844*, and of the court in the Yellow Cab case in relation to the owner-operator Matharu (concerning the status of an investor/driver), similarly applies in the circumstances of this case. I find that the weight of the factors set out above supports a finding of independence. I find, based on the policy at AP1-1-3, that the plaintiff was independent.

[50] Accordingly, I find that the plaintiff was not a worker within the meaning of Part 1 of the Act.

[51] In view of my conclusion on this issue, it does not appear necessary to proceed to address any other issues in this application. In the event that any further determination is required in relation to the legal action, a request may be made for a supplemental certificate.



**Conclusion**

[52] I find that at the time of the March 10, 2008 accident, the plaintiff, Darshan Singh also known as Darshan Singh Valasra, was not a worker within the meaning of Part 1 of the Act.

Herb Morton  
Vice Chair

HM:gw

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT  
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

DARSHAN SINGH also known as DARSHAN SINGH VALASRA

PLAINTIFF

AND:

DALJIT SINGH KALRA

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, DALJIT SINGH KALRA, in this action for a determination pursuant to section 257 of the *Workers Compensation Act*,

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT  
at the time the cause of action arose, March 10, 2008:

1. The Plaintiff, DARSHAN SINGH also known as DARSHAN SINGH VALASRA,  
was not a worker within the meaning of Part 1 of the *Workers Compensation Act*.

CERTIFIED this       day of February, 2012.

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Herb Morton  
Vice Chair

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE WORKERS COMPENSATION ACT  
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

DARSHAN SINGH also known as DARSHAN SINGH VALASRA

PLAINTIFF

AND:

DALJIT SINGH KALRA

DEFENDANT

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SECTION 257 CERTIFICATE

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WORKERS' COMPENSATION APPEAL TRIBUNAL  
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