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Via email: ptboard@gov.bc.ca; catharine.read@ptb.ca

Catharine Read
Chair, Passenger Transportation Board
202-940 Blanshard St
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Re: Submissions to operate ride-hailing in BC

The BC Federation of Labour (BCFED) represents some 500,000 members of affiliated unions, working in every sector of the economy and every corner of the province. The BCFED has a long and proud history of fighting for the rights of all working people. We write to the Passenger Transportation Board (PTB) in response to applications filed by prospective ride-hailing services in the Lower Mainland. Considering your mandate to promote sound economic conditions in the industry, we wish to draw your attention to a vital metric for the health of any industry, and one that is often overlooked: the well-being and rights of workers.

In your review of ride-hailing applications, the BCFED recommends that the PTB consider how the entrance of Uber, Lyft and other ride-hailing applicants will impact the rights, protections, wages and benefits of drivers, and how these impacts relate to the new price and fare regime. Expanding passenger transportation services should not unduly impact existing good-paying jobs. The PTB should also ensure its regulatory framework helps create stable employment—jobs that pay well, provide benefits and protections, and have some security to allow workers to support themselves and their families.

We call on the PTB to require applicants, including Uber and Lyft, to disclose whether their drivers will be considered independent contractors or employees. We encourage the PTB to consider, in their assessment of applicants, how drivers will be classified, to ensure workers have the protection of minimum labour standards under the *Employment Standards Act (ESA)*, *Workers Compensation Act* and *Occupational Health and Safety Regulation*.

Context

The rise of precarious work and economic insecurity in the labour market in Canada are well documented and understood.¹ What is less well-known is how the rise of the “gig economy” — including ride-hailing — is impacting workers in Canada, particularly in the passenger transportation industry. There is growing evidence in the United States that the arrival of ride-hailing has led to significant declines (53%) in the earnings of drivers in the transportation sector.² Relatedly, other studies show that Uber drivers earn comparably low-wages and have limited access to benefits³, and that Uber and Lyft drivers struggle to reach even a minimum-wage equivalent income.⁴

Misclassifying workers

To understand the potential negative impact on the quality of jobs in BC’s transportation sector, the PTB must contend with how companies like Uber and Lyft misclassify their employees as independent contractors elsewhere. By insisting their drivers are not employees (and lobbying governments aggressively to that effect), companies like Uber and Lyft are able to avoid meeting minimum labour standards for wages, benefits and safety.⁵

Key early-adopter jurisdictions where ride-hailing platforms operate have begun increasing regulation of the sector after its establishment and proliferation. In the United Kingdom, for example, Uber recently lost an appeal against a landmark 2016 ruling mandating that it treat its drivers as employees entitled to benefits like a minimum wage and holiday pay.⁶ In New York, Uber is fiercely fighting new restrictions on fleet size and fares which are meant to bring more fairness to the market.⁷ Most substantially, California recently passed landmark legislation that will allow “gig economy” workers, including Uber and Lyft workers, to get labour protections and benefits that all employees get in that state.⁸ This includes “unemployment insurance,

¹ Lewchuk, Wayne, Lafleche, Michelynn. “Precarious Employment and Social Outcomes”. *Just Labour: A Canadian Journal of Work and Society*. Vol 22. (Autumn, 2014).

² Farrell, Diana., Greig, Fiona., Hamoudi, Amar. *The Online Platform Economy in 2018: Drivers, Workers, Sellers, and Lessors*. JP Morgan Chase & Co Institute. (September 2018).

³ Mishel, Lawrence. *Uber and the Labour Market*. Economic Policy Institute. (May 15, 2018).

⁴ Mäntymäki, Matti, Abayomi Baiyere and A.K.M Najmul Islam. “Digital Platforms and the changing nature of physical work: Insights from ride-hailing.” *International Journal of Information Management*, No. 49, pg. 452-460 (2019)

⁵ Stewart, Andrew, and Jim Stanford “Regulating work in the gig economy: what are the options?” *Economics and Labour Relations Review*, Vol. 28, Issue 3, pg. 382-401 (2017)

⁶ Browne, Ryan. “Uber loses appeal against landmark UK workers’ rights ruling.” *CNBC*, Dec. 19, 2018.

⁷ Marshall, Aarian. “Surprise! Uber and Lyft Don’t Like NYC’s New Ride-Hail Rules.” *Wired Magazine*, Sept. 16, 2019.

⁸ Conger, Kate and Noam Scheiber “California Bill Make App-Based Companies Treat Workers as Employees.” *The New York Times*, Sept. 11, 2019.

health care subsidies, paid parental leave, overtime pay, workers' compensation, paid rest breaks," and the minimum hourly wage. It also allows gig workers the opportunity to unionize.

As the PTB assesses applications, it cannot ignore the challenging working conditions that are the norm in other jurisdictions, and which have allowed ride-hailing platform drivers to be treated as independent contractors. The stark power disparity between workers and ride-hailing companies is a major source of discontent among drivers around the globe.⁹ For example, in instances when Uber and Lyft drastically reduced their fare rates, drivers were forced to significantly increase the amount of hours they worked just to maintain the same level of income. This raises concerns about both driver and pedestrian safety.

These drivers are beginning to demand their rights *as workers* be respected. For example, due to concerns with health, safety and wages, Uber and Lyft drivers went on strike in 12 U.S. cities this year, as well as in Brazil, Australia, Kenya, Nigeria, Chile and Costa Rica. Here in Canada, hundreds of Uber drivers in Toronto have come together in a drive to unionize.¹⁰ While out of the scope of the PTB, the BCFED continues to advocate for sectoral bargaining to make it easier for workers in highly-precarious sectors like ride-hailing to organize and form a union.

Fairness in BC

BC has one chance to establish a fair system. That means minimum employment standards should not be optional. In assessing applications, the PTB should consider how companies plan to classify their workers. Treating ride-hailing drivers as freelance contractors frees companies of their obligations to the people whose labour they rely upon. Drivers are not independent contractors. They lack control over many aspects of their work. For example, the company determines how work is offered and accepted, sets fares, collects payment, prescribes routes and takes profit from the drivers' work. They impose a driver performance rating system, set conduct standards, and terminate those who do not meet the standards. Companies even control the number of drivers who can compete for work.

The current definition of "employee" contained in the ESA is sufficiently broad, and thus can and must be applied to these workers. As employees protected by the ESA, ride-hailing drivers are entitled to receive at least the minimum wage, overtime pay, vacation pay, meal breaks and access to other employment protections. The ESA identifies that, among other definitions, a person who is "directly or indirectly" allowed to perform work by another person or an organization is an employee. As the labour that ride-hailing drivers provide is dependent upon the platforms through which they work, and as their rate of compensation is wholly determined by the ride-hailing platforms, this definition should include these workers. Finally, ride-hailing

⁹ Mäntymäki, Matti, et al., *ibid.*

¹⁰ Provenzano, Brianna. "Hundreds of Toronto Uber Drivers Have Announced Plans to Unionize." *Pacific Standard Magazine*, June 27, 2019.

companies and their workers should have the full protection of *the Health and Safety Regulations*; should be required to pay into Employment Insurance and the Canada Pension Plan so that drivers are able to access these benefits; and companies should be required to pay workers' compensation premiums should a driver be injured on the job.

The PTB cannot trust ride-hailing companies to look out for the interests of workers. They have a record of using incentives to over-saturate the market with drivers, driving down fares and consequently impacting drivers' take-home pay.¹¹ By requiring minimum hourly wages, and other minimum standards included in the ESA, companies will be disincentivized from flooding the driver pool at the expense of the workers and their dependents.

Impact on taxi drivers

The implementation of ride-hailing will impact workers in BC's existing passenger transportation sector. Every effort should be made to minimize the impact on these workers. Part of assessing economic soundness must include an applicant's approach to the fare and rate structure. The BCFED is concerned that the way the PTB has currently set up the regulations around fares —regulating what taxis can charge, but leaving new ride-hailing entrants free to undercut taxi fares above the minimum charge — will allow for practices that ultimately drive down wages for all drivers. A more equitable fare structure for both taxis and ride hailing companies could offers stability for the industry, choice for consumers and liveable wages for drivers

Impact on the public

Recent research into the expansion of Uber and Lyft in Toronto has shown that the disparity in regulation (or lack thereof) of ride-hailing companies when compared to taxi services has increased vehicle emissions and traffic congestion in the city.¹² The report identifies that companies such as Uber and Lyft have added millions of vehicle trips per year to Toronto's streets, primarily in the downtown core, raising concerns about air quality, safety and vehicular emissions. The expansion of these companies has also reportedly reduced usage of public transit by some 30 million trips annually, thus undercutting a core public service.

Conclusion

The PTB cannot overlook the well-being and rights of workers if it is to fulfill its mandate to consider economic soundness when assessing applications for ride-hailing. This means considering whether drivers have the protection of the *Employment Standards Act, Workers Compensation Act and Occupational Health and Safety Regulation*. Multination ride-hailing

¹¹ Mäntymäki, Matti, et al., *ibid*.

¹² Kopun, Francine. "Toronto's unequal taxi and ride-share rules contributing to downtown congestion, worsening emissions, report says." *The Toronto Star*, June 24, 2019.

companies should not be able to skirt BC's minimum employment standards. The PTB should assess applicants based on how they will treat their workers, and the quality of jobs that will be created in this sector.

Yours sincerely,



W. Laird Cronk
President



Sussanne Skidmore
Secretary-Treasurer