



PIGOTT STINSON LAWYERS

4 March 2010

Our Ref: OBR-KT-SC:091388
Partner: Owen Ratner
Contact: Ray Travers
Email: r.travers@pigott.com.au

The Hon John Ajaka MLC
Committee Chair
Select Committee on the NSW Tax Industry
Legislative Council
Parliament House NSW
Macquarie Street
SYDNEY NSW 2000

By post and facsimile: 9230 2981

Dear Mr Ajaka

Re: Inquiry into the NSW Tax Industry

We act for Mr Reginald Kermode.

We note you have been in correspondence with Mrs Sharon Doyle, Company Secretary of Cabcharge Limited.

We are now instructed to assume conduct of that correspondence and accordingly request that you direct all future correspondence to us.

We refer to your letter of 25 February 2010 ("your letter") on behalf of the Select Committee on the NSW Tax Industry.

We also refer to the article in the Sydney Morning Herald of yesterday entitled "Cabcharge boss gets summons to inquiry". We enclose a text copy of that article for your reference.

We note that your letter requested that Mr Kermode further consider his position as to acceding to the Committee's request that he appear before it to give evidence. We note that we had previously expressed our concerns about doing so in circumstances where there was defamation litigation on foot pending between our client and the publishers of the Sydney Morning Herald, and that you sought to meet those concerns by assuring us that Mr Kermode's evidence could be taken in camera.

We note that your letter foreshadowed the issue of a summons to Mr Kermode should he decide not to attend, and extended to Mr Kermode a period up to Thursday 11 March 2010 to seek advice, and advise you of his decision whether to accept the Committee's

Associated Firm – Melbourne: McKean & Park

www.pigott.com.au

Level 3, 10 Barrack Street, Sydney NSW 2000 GPO Box 3380, Sydney NSW 2001, DX 125 Sydney
Tel +61 (02) 8251 7777 Fax +61 (02) 9262 4288 Email: partners@pigott.com.au ABN 82 680 297 642



Liability limited by a scheme approved under Professional Standards Legislation

invitation to appear voluntarily. In accordance with the contents of your letter, Mr Kermodé is in the process of obtaining such further advice.

As previously advised in Mrs Doyle's letters to you of 1 and 11 February 2010, it is Mr Kermodé's position that under normal circumstances he would be delighted to assist the Committee but that he should, under no circumstances, attend any hearing where the results of that attendance could prejudice his rights in respect of Court proceedings.

In those circumstances we were greatly disturbed to read the article in yesterday's Herald.

It is apparent that the contents of your letter, or the deliberations of the Committee which gave rise to it, have been released to the media by some person or persons associated with the Select Committee. Further the organ of the media to which that release has occurred is the newspaper which has previously defamed Mr Kermodé, leading him to commence defamation proceedings.

That this should occur in circumstances where you are seeking to assure Mr Kermodé that his evidence may be received confidentially is quite remarkable. It strongly suggests that any appearance by Mr Kermodé before the Committee will be attended by formal or informal briefings of the Herald by persons associated with the Committee.

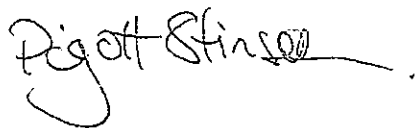
Further to the email from Mrs Sharon Doyle to Ms Rachel Simpson of yesterday's date we seek your immediate advice as to:

- how it came to be that a copy of your letter, or alternatively, the content of the deliberations of the Committee, was provided to the Herald,
- whether your office proposes to provide copies of future correspondence between you and Mr Kermodé to the Herald (and/or to the media generally) and/or to brief Herald (and/or the media generally) in relation to the Committee's dealings with Mr Kermodé and
- whether your office proposes to make any further assurances concerning the manner in which Mr Kermodé's evidence will be received.

We ask that you provide this advice as a matter of urgency, having regard to the time frame in your letter.

Provided that we have a prompt response to this letter, Mr Kermodé will be responding to your letter within that time frame. However, the recent apparent disclosures by the Committee to the Herald seem to us to undermine the assurances given to Mr Kermodé to date.

Yours faithfully
PIGOTT STINSON



[SMH | Text-only index]

Fairfax Digital Advertising

Cabcharge boss gets summons to inquiry

Date: March 03 2010

Linton Besser

Sydney's taxi tsar, Reg Kermode, will be forced by subpoena to give evidence before a parliamentary inquiry into the taxi industry.

The NSW parliamentary inquiry was set up following revelations, published in the *Herald*, that Cabcharge has been the chief beneficiary of a scheme which provided Sydney's powerful taxi networks with millions of dollars worth of taxi licences for free.

In February, during a three-day public hearing, Mr Kermode, Cabcharge's executive chairman, declined to appear, citing legal advice.

Last week, however, he was issued with a letter from the select committee running the inquiry, which demanded he take up a renewed invitation to appear as a witness or else he will receive an enforceable summons.

Three others have also been invited again to appear before the inquiry: Jim Glasson, the Transport Department's former director-general and now the chief executive of ComfortDelgro Cabcharge; Neville Wran, the former NSW premier; and Bruce Baird, the former transport minister in the Greiner government.

But of the four who received a second invitation to appear, it is only Mr Kermode who faces a summons should he decline.

Cabcharge is already fighting a high-profile case in the Federal Court which has been brought by the Australian Competition and Consumer Commission.

The commission alleges that Cabcharge has abused its market power and forced others out of the multibillion-dollar industry. Cabcharge denies all such allegations.

Christopher Brown, the head of the NSW Tourism and Transport Forum, has told the inquiry that Sydney's taxi services have suffered while "we have seen the development of cartels, powerful interests and even collusive practices that have led to negative outcomes for both passengers and drivers".

"I applaud the efforts of the Australian Competition and Consumer Commission, which is prosecuting Cabcharge for alleged anti-competitive behaviour," he said.

He said the industry needed a complete overhaul.

"I can guarantee that Cabcharge lurks at the centre - Cabcharge's fingerprints are there somewhere. It is at the epicentre of the taxi industry and where the problems exist because there is not enough competition."

This week, the government announced the first of 100 new taxi licences have been issued, after it reneged on its original promise to release an unlimited number of new licences.

The government also released a discussion paper which revealed that while Western Australia's taxi fleet grew by 25 per cent between 2003 and 2007, Sydney's fleet has grown less than 1 per cent.

Do you know more? investigations@smh.com.au

This material is subject to copyright and any unauthorised use, copying or mirroring is prohibited.

[SMH | Text-only index]