



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**The Airport Exemption & Court Applications to Quash
Licensing By-laws**

Date:	February 4, 2008
To:	Licensing and Standards Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation that affects the City and contains advice that is subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report outlines:

1. decisions the City has taken with respect to licensing taxis and limousines picking up passengers in the City for transportation to Lester B. Pearson International Airport (the “Airport”) and the legal implications of these decisions;
2. the order of the Superior Court of Justice made January 28, 2008 preventing the City from enforcing the general *Municipal Code* licensing provisions against taxis and limousines licensed by the Greater Toronto Airports Authority (“GTAA”) picking up passengers in the City until the legal challenge to the removal of the Airport Exemption is heard; and
3. other court proceedings brought by limousine owners who hold licenses issued by the City.

Prior to January 1, 2007, GTAA-licensed vehicles were permitted to pick up passengers in the City for transportation to the Airport pursuant to an exemption in the *Municipal Act* (the “Airport Exemption”). The *City of Toronto Act, 2006* does not contain an Airport Exemption. The Airport Exemption in the *Municipal Code* was repealed by Council at its meeting on December 11, 12 and 13, 2007. The Airport Exemption in the *Municipal Code* did not apply to GTAA-licensed taxis and limousines and it was, therefore, essentially redundant language.

The Airport Taxi (Pearson Airport) Association and the Airport Limousine Operators Association (together the “Airport Taxi and Limo Associations”) commenced court applications to quash By-law 1425-2007 repealing the Airport Exemption and asking the Superior Court of Justice to declare that the Airport Exemption applied to them or that the City had no authority to require them to obtain City-issued licenses. On January 28, 2008, the Superior Court of Justice temporarily ordered the City not to enforce the *Municipal Code*’s licensing provisions requiring GTAA-licensed taxi and limousines to obtain Toronto licenses to pick up passengers in the City.

Attached as Schedule A is a summary outlining how the taxicab and limousine industry operated in the City before January 1, 2007 and how it is anticipated it will operate in the future in the absence of any Airport Exemption for GTAA-licensed vehicles.

Attached as Schedule B is a summary of the key licensing by-laws referenced in my report.

Attached as Schedule C is the history of the regulation and licensing of the taxi and limousine industry.

The confidential attachment to this report contains legal advice from the City Solicitor with respect to the existing and potential litigation relating to taxis and limousines and their regulation by the City.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The Licensing and Standards Committee and Council consider the recommendations in the Confidential Attachment; and
2. Council direct that the confidential report and the attachments remain confidential indefinitely as it contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are set out in the confidential attachment.

DECISION HISTORY

At its meeting on December 11, 12, 13, 2007, Council directed that the City Solicitor provide a comprehensive report to the L&S Committee at its meeting scheduled to be held on February 15, 2008 with respect to the legal implications of the decisions that Council has made to date related to the licensing and regulation of taxis and limousines picking up passengers in the City for transportation to the Airport.

ISSUE BACKGROUND

Repeal of the Airport Exemption, By-law 1425-2007

At its meeting on December 11, 12, and 13, 2007, Council passed By-law 1425-2007, which repealed the Airport Exemption in section 545-2B, Chapter 545, Licensing of the *Municipal Code*.

The Airport Exemption in the *Municipal Code* was repealed because it applied only to taxis or limousines taking passengers to an airport “operated by the Crown in right of Canada” and holding a permit to do so issued by the federal Minister of Transport.

Since the Airport is operated by the GTAA and not the Crown, the Airport Exemption in the *Municipal Code* did not exempt GTAA-licensed taxis and limousines from the City’s licensing requirements if they were picking up passengers in the City for transportation to the Airport.

No Enforcement of Licensing Requirements Against GTAA-licensed Taxis and Limos

On January 17, 2008, the Airport Taxi and Limo Associations commenced court applications asking the Court to:

1. quash By-law 1425-2007 repealing the Airport Exemption; and
2. declare that the Airport Exemption in the *Municipal Code* applies to them or that the City does not have authority to require taxis and limousines taking passengers outside of the municipality to hold licenses issued by the City.

On January 28, 2008, the Superior Court of Justice issued a temporary order preventing the City from enforcing the licensing requirements in the *Municipal Code* against GTAA-licensed vehicles that do not hold City-issued licenses on the basis that:

1. the court applications raised serious legal issues with respect to whether Council acted in bad faith in repealing the Airport Exemption and whether the Council has authority to require GTAA-licensed vehicles to hold licenses, and these legal issues require a full factual and legal analysis be presented to the court;

2. GTAA-licensed taxis and limousines who did not hold City-issued licenses would suffer drastic financial consequences if they were prevented from picking up passengers in the City. Less than 30% of GTAA-licensed taxis hold licenses issued by the City, and no airport limousines hold licenses issued by the City; and
3. there was no evidence that the City or the public would suffer any harm if the temporary order was granted delaying enforcement until the Court could consider the issues more fully.

The Superior Court's order will remain in effect until the court applications brought by the Airport Taxi and Limo Associations are heard. As of the writing of this report, no date has been set for those court hearings.

CONTACT

Michele A. Wright, Solicitor, Legal Services Division, Litigation
Tel: (416) 397-5342; Fax: (416) 397-1765; e-mail: mwright4@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Schedule A – Operation of the Taxicab and Limousine Industry in Toronto

Schedule B – Summary of the Taxi and Limousine Licensing By-laws Under Attack in 2007 and at Present

Schedule C – History of the Taxi and Limousine Licensing Regime

Attachment 1 – Confidential Report – Legal Issues Relating to the Airport Exemption & Court Application to Quash Limousine By-laws

Schedule A
Operation of the Taxicab and Limousine Industry In Toronto

1979 to 2007: How the Taxi and Limousine System Operated

To travel *to* the Airport, people could chose to travel by:

- a. taxi or limousine licensed by the Airport; or
- b. taxi or limousine licensed by the City.

To travel *from* the Airport, people could chose to travel by:

- a. taxi or limousine licensed by the Airport;
- b. taxi or limousine licensed by the City if they pre-arranged the pick up with that taxi or limousine company and paid a fee to the Airport (currently \$10 for taxis and \$20 for limousines); or
- c. taxi licensed by the City during specific peak period times when the Airport permitted additional taxis to pick up passengers if the taxi also paid a fee to the Airport (and the fee per trip varied because the GTAA entered into different contracts with taxi brokers).

Throughout this period and even today, transportation *from* the Airport to the City is almost exclusively provided by taxis and limousines holding permits issued by the Airport.

The Court's temporary order restraining the City from taking steps to enforce the requirement that taxi or limousine picking up passengers in the City possess a City-issued license, whatever their destination, ensures the status quo set out above is maintained

2008: How the Taxi and Limousine System Will Operate In the Absence of Any Airport Exemption in the City of Toronto Act or the Municipal Code

The following describes how the taxi and limousine system will operate in the future if the Airport Taxi and Limo Associations are ultimately unsuccessful in their court applications and the Superior Court of Justice's order preventing the City from enforcing the Municipal Code licensing provisions against GTAA-licensed vehicles is lifted.

To travel *to* the Airport, people will be able to chose to travel by:

- a. taxi or limousine licensed by the City.

To travel *from* the Airport, people will be able to chose to travel by:

- a. taxi or limousine licensed by the Airport;
- b. taxi or limousine licensed by the City if they pre-arrange the pick up with that taxi or limousine company and pay a fee to the Airport (currently \$10 for taxis and \$20 for limousines); or
- c. taxi licensed by the City during specific peak period times when the Airport permits additional taxis to pick up passengers if the taxi also pays a fee for each trip made from the Airport (and the fee per trip varies because the GTAA enters into different contracts with taxi brokers).

ML&S advises that there are currently 4,910 taxicab and 663 limousine licenses issued by the City.

Of the approximately 276 GTAA-licensed limousines currently operating, none have City-issued licenses.

Of the approximately 360 GTAA-licensed taxis currently operating, 79 also have City-issued licenses.

GTAA-licensed taxis that do not also have City-issued licenses and GTAA-licensed limousines will continue to deliver passengers from the Airport to the City, but they will be required to:

- a. return empty to the Airport; or
- b. travel to another municipality to pick up a passenger for the Airport.

Schedule B
Summary of the Key Licensing By-laws Referenced in the Report

By-law	By-law's Purpose	Court Challenge	Hearing Date
706-2005 Enacted July, 2005	<ol style="list-style-type: none"> 1. Removed limit on the number of limousine licenses to be issued by the City (which had been in place since 1985) 2. Created a new licensing regime for limousines. 3. The new licensing regime: <ol style="list-style-type: none"> a. set the minimum rate that limousines could charge at \$70 per hour; b. required limousines to operate through limousine service companies; and c. regulated the ratio of sedan and stretch limousines that limousine service companies could carry on business with, among other things. 	Yes	April 22, 2008
217-2006 Enacted March, 2006	Exempted pre-existing limousine license holders from the requirement to have a certain ratio of stretch limousines to sedan limousines for as long as those owners held their licenses (a grandfathering clause).	Yes	April 22, 2008
1417-2007 Enacted December, 2007	Corrected certain technical and drafting errors in By-law 706-2005. No change to the requirements listed in paragraph 3(a) to (c) above for By-law 706-2005.	Yes	April 22, 2008
1082-2007 Enacted September, 2007	Requires City-licensed taxis picking up passengers within defined boundaries of the City to charge the same rates for trips to the Airport that the GTAA requires GTAA-licensed taxis to charge for similar trips from the Airport. Allows, but does not require, limousines to charge the same rates as GTAA-licensed limousines.	No	
1425-2007 Enacted December, 2007	Amended the Municipal Code to remove the Airport Exemption.	Yes	Not set as of date of report.

Confidential staff report for action on the Airport Exemption &
 Court Applications to Quash Licensing By-laws

Schedule C
History of the Taxi and Limousine Licensing Regime

<i>Date</i>	<i>Event</i>
1979	The federal government (which both owned and operated the Airport at the time and until 1996) passed the <i>Government Airport Concession Operations Regulations</i> . The Regulations required vehicles picking up passengers at the Airport to have a license issued by the federal Minister of Transport.
1979	The <i>Municipal Act</i> , the City's governing legislation at that time, contained an Airport Exemption. Vehicles picking up passengers in the City for transportation to an airport owned and operated by the Crown and located outside the City were exempt from the requirement to hold a license issued by the City.
1979	The Airport Exemption in the <i>Municipal Act</i> was imported into the former Municipality of Metropolitan Toronto's licensing by-law with the passage of By-law 48-79.
1996	The GTAA assumed operation of the Airport pursuant to an agreement with the federal government.
1996	<p>The wording of the Airport Exemption in the <i>Municipal Act</i> was expanded so that vehicles picking up passengers in the City for transportation to the Airport continued to be exempt from the requirement to have a license issued by the City after the Airport ceased to be operated by the Crown.</p> <p>The <i>Municipal Code</i> was not amended to reflect the fact that the Airport was no longer operated by the Crown. An amendment to the <i>Municipal Code</i> was not required because the Airport Exemption in the <i>Municipal Act</i> governed the City.</p>
January 1, 2007	The <i>City of Toronto Act, 2006</i> came into force. As of this date, the Airport Exemption in the <i>Municipal Act</i> no longer applied to vehicles picking up passengers in the City to go to the Airport.
April, 2007	Council repealed the Airport Exemption in the <i>Municipal Code</i> and prohibited taxis or limousines holding licenses issued by other jurisdictions from obtaining licenses issued by the City (by By-law 435-2007).
September, 2007	Council re-enacted the Airport Exemption and removed the dual licensing prohibition for limousines by repealing By-Law 435-2007 (by By-law

1082-2007).

- December, 2007 The Airport Exemption was repealed by Council (by By-Law 1425-2007). The Airport Exemption in the *Municipal Code* was repealed because it did not apply to taxis or limousines transporting passengers from the City to the Airport since the Airport is now operated by the Greater Toronto Airport Authority (“GTAA”), not the Crown. Therefore, there is no longer any Airport Exemption in the *Municipal Code*.
- January 17, 2008 The Airport Taxicab (Pearson Airport) Association and the Airport Limousine Operators Association each commence court applications to quash By-law 1425-2007 and for declarations that either the Airport Exemption in the *Municipal Code* applies to them or that the City does not have authority to require taxis and limousines taking passengers outside of the municipality to hold licenses issued by the City.
- January 25, 2008 The court heard the Airport Taxi and Limo Associations’ motions for an order that the City not enforce the general licensing provisions in the Municipal Code that apply to the GTAA-licensed taxis and limousines picking up passengers in the City.
- January 28, 2008 The Court granted the order sought. Therefore, GTAA-licensed taxis and limos can continue to pick up passengers in the City for transportation to the Airport without a license issued by the City.