



## STAFF REPORT INFORMATION ONLY

### Limousine Licensing By-Laws Upheld by Court

<b>Date:</b>	May 2, 2008
<b>To:</b>	Licensing and Standards Committee
<b>From:</b>	City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### **SUMMARY**

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On April 24, 2008, Madam Justice Backhouse dismissed the court application brought by the Toronto Livery Association, the Ontario Limousine Owners Association and Taras Danylevich to quash By-law 706-2005, as amended by By-law 1417-2007, and By-law 217-2006 (together the “Limousine Licensing By-laws”).

All of the provisions of the Limousine Licensing By-laws have been upheld.

Madam Justice Backhouse held that City met its duty to consult prior to the enactment of the By-laws and the portions of the Limousine By-laws under attack were rational regulations in the public interest.

The applicants may appeal the decision of Madam Justice Backhouse on or before May 27, 2008. If no appeal is filed by that date, the order made by Madam Justice Backhouse will be final.

#### **FINANCIAL IMPACT**

There is no financial impact beyond what has already been approved in the current year’s budget.

Having succeeded in defending the court application, the City will seek reimbursement of its legal costs in doing so. The costs that may be awarded to the City are in the discretion of Madam Justice Backhouse and we do not yet know what quantum she may award.

## **DECISION HISTORY**

At its meeting on December 11, 12 and 13, 2007, Council received a report dated November 14, 2007 from the City Solicitor reporting on the court application brought by the Toronto Livery Association, the Ontario Limousine Owners Association and Taras Danylevich.

## **ISSUE BACKGROUND**

By-laws 706-2005 was enacted by Council July 21, 2005. This By-law created a new licensing regime for limousines. Among other things, By-law 706-2005:

1. removed the previous limit of 375 licences available for limousine owners;
2. established the minimum rate that limousines could charge at \$70 per hour;
3. required limousines to operate through limousine service companies;
4. regulated the ratio of sedan and stretch limousines that limousine service companies were required to carry on business with;
5. prohibited limousines from picking up passengers unless the passenger had pre-arranged the fare a minimum of 20 minutes in advance; and
6. prohibited limousines from “staging”, meaning that limousines cannot park at a curbside or loading area within 200 metres of a hotel or entertainment venue unless they have a pre-arranged client pick-up scheduled to occur within 20 minutes.

By-law 217-2006 was enacted by Council on March 30, 2006. By-law 217-2006 exempted those who held limousine owners’ licences on May 19, 2005 from the need to comply with the stretch to sedan ratio requirements.

By-law 1417-2007 was enacted by Council on December 13, 2007; it amended certain technical and drafting errors contained in By-law 706-2005. The requirements of By-law 706-2005 summarized above were not changed.

## **COMMENTS**

In their court application, the Toronto Livery Association, the Ontario Limousine Owners Association and Taras Danylevich (together the “Limousine Operators”) sought to quash By-law 706-2005 on the basis that the City failed in its duty to consult, and that certain portions of the By-law were unreasonable, unfair or passed in bad faith.

### ***Public Notice Provided by the City was Sufficient***

In 2005, when By-law 706-2005 was enacted, the *Municipal Act, 2001* required the City to advise the public of its intention to pass a by-law and hold a public hearing.

Madam Justice Backhouse held that the public notice provided by the City on its website in English of its intention to consider enacting changes to the limousine licensing provisions was sufficient. In reaching this conclusion, she also noted it was conceded on cross examination that individuals who held limousine licences were generally aware of the fact that the City was undertaking a review of the licensing requirements, and 21 individuals made depositions at the April 25, 2005 Planning and Transportation Committee meeting.

### ***By-law Provisions Were Not Unreasonable, Unfair or Passed in Bad Faith***

In dismissing the applicants' arguments that By-law 706-2005 was unreasonable, unfair or passed in bad faith, Madam Justice Backhouse relied upon decisions of the Court of Appeal and the Supreme Court of Canada that emphasize that courts should adopt a deferential approach in considering the legality of a by-law. As she noted, this policy of deference now has a statutory foundation since the enactment of the *City of Toronto Act, 2006*. Among other things, section 213 of the *City of Toronto Act, 2006* provides that a by-law may not be quashed on the basis that it is unreasonable.

On that basis and in view of the evidence and argument presented, Madam Justice Backhouse concluded that the central provisions in By-law 706-2005 under attack related to legitimate concerns in terms of regulating the limousine industry.

In particular, the City argued that it was legitimate for it to consider the potential impact of changes to the limousine licensing regime on the taxi industry and to regulate limousines in a manner designed to reduce or ameliorate potentially negative impacts on the taxi industry. On this issue, Madam Justice Backhouse held that the City does not regulate in a vacuum and, therefore, "its goal of ensuring that each [the taxi and limousine] industry can operate in the public interest is rational." On that basis, she found that the provisions requiring limousine service companies to operate with a particular ratio of stretch to sedan limousines was designed to limit entry to the industry and limiting entry into the limousine industry was a rationale goal.

Madam Justice Backhouse also held that there was no evidence of bad faith and, in fact, found that the long consultation process was “indicative of a careful approach to the City’s powers of regulation and bespeaks the absence of both bad faith and arbitrariness.”

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Decision of Madam Justice Backhouse, dated April 28, 2008