



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Recent Provincial Regulation Re Airport Exemption for
Taxicabs and Implications for Court Applications to Quash
By-law 1425-2007**

Date:	September 8, 2009
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. the legal implications of the regulation passed by the Province of Ontario, O.Reg. 288/09, amending O.Reg. 590/06, filed on July 31, 2009; and
2. the current status of the litigation commenced by the Airport Taxi (Pearson Airport) Association and the Airport Limousine Operators Association (together the "Airport Taxi and Limo Associations"), who each commenced an application to quash By-law 1425-2007.

O.Reg. 288/09 states that by-laws passed by the City that require owners or drivers of taxicabs to have a licence issued by the City do not apply to taxicabs taking passengers to the Airport if they have a licence issued by the GTAA (the "Airport Exemption").

The language of O.Reg. 288/09 is essentially the same as section 156(3) of the *Municipal Act* which precludes municipalities from imposing licensing requirements upon airport-licensed taxicabs that take passengers to airports outside of the municipality in which the passengers are picked up.

The *City of Toronto Act*, 2006, S.O. 2006, c.11 (“*City of Toronto Act*”) did not contain an Airport Exemption.

Prior to the enactment of By-law 1425-2007, however, there was an exemption in the *Municipal Code* that exempted limousines or taxis from the requirement to hold a licence issued by the City if they were picking up passengers in the City for transportation to an airport owned and operated by the federal government. The *Municipal Code* did not exempt taxis and limousines transporting passengers to Lester B. Pearson International Airport (the “Airport”) from the City’s licensing requirements because the Airport is not owned and operated by the federal government. The Airport is operated by the Greater Toronto Airport Authority (“GTAA”).

The Airport Taxi and Limo Associations commenced court applications to quash By-law 1425-2007 and asking the Superior Court of Justice to declare that the City could not imposing licensing requirements upon them.

The confidential attachment to this report contains legal advice from the City Solicitor with respect to the existing litigation relating to GTAA-licensed 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;
2. Council direct that the confidential attachment 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 enacted By-law 1425-2007. By-law 1425-2007 amended Subsection 2B(1) of Chapter 545-2, Licensing Requirement to remove the exemption from licensing available to taxis and limousines transporting passengers from the City to an airport owned and operated by the Federal government if the taxis and limousines held licences issued in respect of that airport under the Department of Transport’s Government Airport Concession Operators Regulations.

At its meeting on February 15, 2008, the Licensing and Standards Committee considered a further report dated February 4, 2008 from the City Solicitor reporting on the order granted by the Superior Court of Justice on January 28, 2008 enjoining the City from

enforcing licensing requirements on GTAA-licensed taxis and limousines pending a full hearing of the court applications brought by the Airport Taxi and Limousine Associations to quash By-law 1425-2007. The Court's order remains in place.

ISSUE BACKGROUND

How the Taxi and Limousine System Operates In Toronto

From 1979 to 2007, the City was prevented from requiring that taxis and limousines picking up passengers in the City hold a licence issued by the City by the Airport Exemption in the *Municipal Act*.

As a result, people travelling to the Airport could choose *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 choose 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.

Effective January 1, 2007, the *City of Toronto Act* contained no Airport Exemption. Therefore, as at that date, taxis and limousines licensed by the GTAA and picking up passengers in the City for transportation to the Airport could be subject to the City's general licensing powers.

However, subsection 2B(1) of Chapter 545-2, Licensing Requirement, in the *Municipal Code* provided that all taxis and limousines picking up passengers in the City were required to hold a City-issued licence except for taxis and limousines transporting passengers from the City to a Federally owned and operated airport if the taxis and limousines held licences issued in respect of that airport under the Department of Transport's Government Airport Concession Operators Regulations.

This led to confusion amongst members of the public and the industry, among others, who interpreted the provision as continuing to exempt GTAA-licensed vehicles from the requirement to hold a licence issued by the City.

By-law 1425-2007 removed this language from the *Municipal Code*. In its preamble, By-law 1425-2007 states that section 545-2B(1) was being amended to remove the above language because the Airport is not operated by the Crown and the inclusion of this language in the *Municipal Code* had caused some confusion among members of the public who erroneously believe that vehicles picking up passengers in the City and traveling to the Airport do not require a license issued by the City.

A more detailed history of the taxi and limousine licensing regime is attached as Schedule A to this report.

Steps Taken to Date In Court Applications to Quash By-law 1425-2007

Following the enactment of By-law 1425-2007, the Airport Taxi and Limo Associations commenced separate court applications asking the Court to:

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

The following is a brief chronology of the steps taken to date in response to this court application:

- | | | |
|----|--------------------|---|
| a. | January 28, 2008 | An injunction was granted by Madam Justice Low prohibiting the City from enforcing requirements that taxis or limousines licensed by the GTAA hold a licence issued by the City if they picked up passengers in the City for transportation to the Airport. The City paid each of the Airport Taxi and Limo Associations \$40,000 in costs in respect of this motion. |
| b. | September 17, 2008 | A motion brought by the Toronto Taxicab Industry Association (“TTIA”) seeking status to intervene in the court applications commenced by the Airport Taxi and Limo Associations was heard. It was opposed by the Airport Taxi and Limousine Associations and the City. |
| c. | November 7, 2008 | Madam Justice Kelly issued her decision dismissing the TTIA’s motion for intervenor status. The TTIA was required to pay costs to the Airport Taxi and |

Limo Associations; the City did not seek costs to be awarded to it.

- d. December 1, 2008 The Airport Taxi and Limousine Associations each served a summons to witness upon Councillor Moscoe
- e. May 22, 2009 The City brought a motion to quash the summons to witness served upon Councillor Moscoe.
- f. May 25, 2009 Mr. Justice Perell issued his decision dismissing the City's motion to quash the summons.
- g. June 23, 2009 The City brought a motion seeking leave to appeal the decision of Mr. Justice Perell.
- h. June 29, 2009 Madam Justice Wilson issued her decision denying the City leave to appeal the decision of Mr. Justice Perell. The City paid costs of \$9,500 to the Airport Taxicab Association and \$10,500 to the Airport Limousine Association in respect of both the original motion to quash the summons and the leave to appeal.

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 – History of the Taxi and Limousine Licensing Regime

Attachment 1 – Confidential – Recent Provincial Regulation Re Airport Exemption for Taxicabs and Implications for Court Applications to Quash By-law 1425-2007

Attachment 2 – Ontario Regulation Made Under the *City of Toronto Act, 2006*, Amending O.Reg. 590/06 (Licensing Powers)

Schedule A
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. As at the date of this report, the injunction has not been lifted.
- July 31, 2009 The Minister of Municipal Affairs and Housing passes O.Reg. 288/09. The regulation states that by-laws passed by the City requiring owners or drivers of taxicabs to have a licence issued by the City do not apply to taxicabs taking passengers to the Airport if they have a licence issued by the GTAA.