



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**Court Decision regarding Uber Transportation Service**

<b>Date:</b>	September 23, 2015
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	All
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City. This report also contains advice or communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	

**SUMMARY**

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This report summarizes the decision of the Ontario Superior Court of Justice released on July 3, 2015 in a court application by the City regarding Municipal Code, Chapter 545, Licensing, and taxicabs and limousines. The confidential portion of this report (Attachment 1) provides confidential information and advice regarding this decision.

**RECOMMENDATIONS**

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The City Solicitor recommends that:

1. Council adopt the recommendations contained within Confidential Attachment 1; and
2. City Council direct that Confidential Attachment 1 remain confidential as it contains advice that is subject to solicitor-client privilege, and pertains to litigation or potential litigation. City Council authorize the public release of all or a portion of the confidential instructions once adopted by City Council at the discretion of the City Solicitor.

**Financial Impact**

If adopted, the recommendations in this report will have no financial impact beyond what has already been approved in the current year's budget.

Additional financial impacts are identified in Confidential Attachment 1.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

On May 5, 6 and 7, 2015, City Council deferred consideration of Item LS3.5 until such time as City Council considers a report from the City Solicitor with respect to the Court decision on Uber.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS3.5>

## **ISSUE BACKGROUND**

In September, 2014, Uber began operating its UberX and UberXL services in Toronto, which use drivers who do not hold a City-issued licence and private vehicles.

Due to concerns about public safety and other matters, the City brought a court application in November, 2014 against three corporations, Uber Canada Inc., Uber B.V., and Raiser Operations B.V. (collectively "Uber"), requesting a permanent injunction to stop Uber from operating all of its services in Toronto unless it obtained the required taxicab broker and limousine service company ("LSC") licences and it obeyed related requirements of the *Toronto Municipal Code*.

## **COMMENTS**

### *Positions of the Parties*

At the hearing, the City produced an extensive documentary record and argued that Uber required a licence, as they arranged transportation service for compensation and carried on many other activities that were indicia of their operation as a broker, such as recruiting drivers, suspending driver accounts, collecting payments, and taking a fee for service.

Uber argued that their business model, which relies on smartphone technology and a "peer-to-peer" system of independent drivers was not captured by the language of the by-law. Uber also made an alternative argument that if it was required to obtain a business licence, this requirement violated its constitutional right to freedom of expression.

### *Court Decision*

In a decision released on July 3, 2015, the court dismissed the City's application. The court determined that Uber's operations did not fall within the definitions of "taxicab brokerage" and "limousine service company" set out in Chapter 545 and therefore Uber did not require a licence. The court also interpreted the definitions of "taxicab" and

"limousine" as well as other provisions of Chapter 545. The court did not address Uber's argument regarding freedom of expression, as it was not necessary to do so.

Chapter 545 defines "taxicab broker" and "limousine service company" as persons who "accept" calls or requests for taxicab or limousine service. The court interpreted these definitions narrowly and determined that none of the respondents "accept" requests, as they do not operate in the manner of a traditional brokerage by agreeing to provide transportation service, but rather as a passive, mechanical relay. The court determined that the only party to "accept" a request in this model was the driver of the vehicle.

The court also determined that the word "calls", found in the definition of "limousine service company", could only mean a telephone call, and therefore Uber, which uses smartphone technology to arrange transportation service, was not captured.

In making the decision that Uber did not require a taxicab broker or LSC licence, the court examined the activities of each respondent individually, rather than collectively, although they are related corporations. The court determined that although Uber Canada Inc. provides customer service and recruits drivers, among other things, these activities did not bring the company within the definitions of taxicab broker and limousine service company. The court also found that, other than licensing the use of the Uber smartphone application to users and drivers, Uber B.V. and Raiser Operations B.V. do not "accept" requests for service and do not play any role in relaying such requests.

The court also interpreted the definitions of "taxicab" and "limousine". It determined that the definition of taxicab captures only vehicles that are already licensed as one of the four existing taxicab types: standard, ambassador, accessible, and Toronto Taxicab. "Limousine" captured all other for-hire vehicles and therefore all for-hire vehicles are required to obtain either a taxicab or limousine licence.

The practical consequence of the court decision is that Chapter 545, as currently drafted, does not apply to Uber and similar businesses. Chapter 545 continues to require owners and drivers of taxicabs and limousines to obtain a City-issued licence.

The court decision is available online at: <http://canlii.ca/t/ggrt1>

The Executive Director, Municipal Licensing and Standards, has been consulted in the preparation of this report.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Attachment 1: Confidential Attachment