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Toronto Taxi Owner – Licence Number 416

**Taxicab Owner v. Requirement
for a VFH Driver's Licence**

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Province of Ontario ("Province") and City of Toronto ("City") Governments

In 1973 when I entered the City of Toronto's ("City") taxi industry, my vehicle owner's licence was also my permission to drive my *own* taxicab as stated in the previous governing by-law, the Toronto Municipal Code, Chapter 545, s/s 545-131, which provided for an owner's licence to be endorsed for the owner to also act as a driver.

"43 years later" when the Toronto Municipal Code, Chapter 546, Licensing, Vehicles-for-Hire came into effect on July 15, 2016, that all changed. The City, on a recommendation from the Municipal Licensing and Standards ("ML&S") who regulates and enforces Chapter 546, removed the right for a taxicab owner to drive his or her own taxicab, without first obtaining a VFH driver's licence.

When I enquired why the change was made, I was informed by the ML&S, they wanted to have two distinct taxicab owners' categories, one being a driver and one being a non-driver. When I pointed out that could easily be achieved by typing on the front of the licence beside the word *Taxicab Owner*, either driver or non-driver, that suggestion fell on deaf ears obviously showing this idea was never considered or would be considered.

Perhaps this was decided to be done because of the way the Province of Ontario ("Province") licenses their drivers and vehicles. As we all know, you are required by the Province to have a license to drive and another to own and operate a vehicle.

The difference between the Province's and Toronto's approach to this requirement is that in the case of the Province, anyone has the capability to drive the vehicle if they have a current Ontario driver's licence and are not restricted by the vehicle's insurance policy.

In the case of the taxicab owner who wants to drive his or her own taxicab, no one else would have the authority to drive the taxicab. If the ML&S wants further proof as to only the owner driving their own taxicab, they need only to check the filed affidavit of insurance, which specifies only the owner is allowed to drive his or her own taxicab.

So, what did the City achieve by removing a taxicab owner's rights to drive their own taxicab by requiring them to first have to obtain a VFH driver's licence? The only thing it achieved was to punish a taxicab owner for driving their own taxicab by adding a second licensing fee where other categories operating within the definition of a taxi business are either paying only one licensing fee or no licensing fee whatsoever.

Could there be an underlying reason for the requirement for this licence? When you consider Chapter 546 has given exemptions to numerous licensing categories named in the by-law and for others outside of the by-law, is this additional license requirement perhaps to make up for the licensing revenue shortfalls surrounding those exemptions?

Even without considering the aforementioned, I believe Chapter 546 still gives permission for a taxicab owner to drive his or her own taxicab without first having to obtain a VFH driver's licence and by mandating a taxicab owner to obtain this licence has created a conflict within the by-law. This decision exemplifies one of the numerous and unfair obligations contained in this by-law that are not only in conflict with the by-law, but in violation of senior statutes as well.

Toronto Municipal Code, Chapter 546, Licensing, Vehicles-for-Hire By-law.

Licence No. V02-0036034 is a Toronto Taxicab Owner's Licence issued to Manley, Gerald Herbert, which categorizes me as a taxicab owner, not a taxicab driver and the licence clearly states, "LICENCE - "To Operate" - As - TAXICAB OWNER"

"Article 1 - General Provisions, 546-1 - Definitions

Taxicab Operator

Any person, other than a vehicle-for-hire driver operating a taxicab who manages, rents out, controls, or otherwise has custody, whether partially or completely, of a taxicab licensed by the City of Toronto on behalf of its owners and who is required to be licensed under this chapter.

To Operate Includes:

When used in reference to a *taxicab*, limousine or PTC vehicle, includes driving a vehicle and making it available to the public for transportation service."

My claim is further supported by the following:

"546-43 – Owners and vehicles to be licensed

C. – No owner shall permit any taxicab which he or she does not own, to be driven under the authority of his or her owner's licence." This clearly points out that a taxicab owner's licence is an authority to drive.

"Article 6 – 546-62 – Taxicab Operators – Owner who manages deemed to be a taxicab operator.

A – A taxicab owner who manages his or her own vehicle shall be deemed to be a taxicab operator for that vehicle and shall obey the provisions of this Chapter related to taxicab operators.

B – taxicab owner *who manages his or her own vehicle*, is *exempt* from the requirement to obtain a taxicab operator’s licence and is exempt from the requirement to have a place of business under s/s 546-68A.” So, I would like the City to consider the following:

I manage my own taxicab; by by-law definition, I am a taxicab operator; exempted from requiring an operator’s licence by virtue of 546-62; by the by-law definition of To Operate has permission to drive my own vehicle so, *why do I require a VFH driver’s licence?*

Ms. Alice Xu, Manager, Licensing and Administrative services in a letter to me dated June 29, 2018 argues my previous statement by stating *“Further to your interpretation of Chapter 546 with respect to taxicab operators is incorrect. There is a definition of “taxicab operator” that specifically excludes vehicle-for-hire drivers who operate a taxicab.”*

If you read the definition of a taxicab operator, which I have included on page #2 of this report, without any preconceived notions as to what its purpose is, you will clearly see that *other than a vehicle-for-hire driver operating a taxicab* in this definition is meant for a VFH driver operating someone else’s taxicab, not a taxicab owner driving his or her own taxicab. Note line #3 of the definition, *on behalf of its owners.*

With this in mind, it would also support Article 6, 546-62 (B) which states under these circumstances and as a taxicab owner who manages his or her own taxicab, I am *exempt* from the requirement to obtain an operator’s licence, which would make your argument a moot point and show, *perhaps I am not incorrect?*

If the City wants a taxicab owner who drives his or her own vehicle to require a VFH driver’s licence, then the requirement to obtain a taxicab owner’s licence would have to be abolished as requiring two separate City business licences for a taxicab owner to drive his or her own taxicab is totally unnecessary.

Chapter 546, Article 6, 546-62 would have to be removed from the by-law in its entirety and the definition of a Taxicab Operator would have to be amended to include after *“other than a vehicle-for-hire driver”* words to the effect, *“and, other than a vehicle-for-hire owner.”*

“Excise Tax Act – Interpretation – Definitions – 123 (1)” – Effective July 1, 2017

The definition of a taxi business was changed to include, *“if the transportation is arranged or coordinated through an electronic platform.”*

Private Transportation Companies (PTC’s) such as Uber and Lyft operate their taxi business from an electronic platform. This shows by federal definition that they are operating a taxi business, so their drivers must comply with Chapter 546, which regulates a taxi business in the City of Toronto and obtain a VFH driver’s licence, which presently they do not have and shows the by-law is not being fairly enforced for all categories named within or outside of the by-law who carry on a VFH taxi business.

In fact, the PTC drivers do not have any municipal licence whatsoever. The by-law states they are required to have a PTC driver's licence, but since the licence is issued by the PTC not the City and the cost is only \$15 not the VFH driver's licence fee of \$130, in reality it is only a registration fee, not a municipal taxi business licence at all.

This makes the Toronto Municipal Code, Chapter 546, Licensing, Vehicles-for-Hire in conflict with and in violation of the Excise Tax Act, as neither PTC's nor their drivers in the City of Toronto, are being licensed or regulated as operating in a taxi business as defined in the Act.

The wording in this federal Act would supersede the wording in Chapter 546, a municipal by-law mandating Toronto to pass and enforce the rules and regulations for PTC's and their drivers, in the same manner as they do for their established taxi industry.

Therefore, since the necessity under Chapter 546 of requiring a VFH driver's licence is not being enforced on a PTC driver, who drives in a taxi business as I do, my obligation for this licence becomes unnecessary as well and absolves me under these circumstances from requiring a VFH driver's licence as each entity named in or out of the by-law that drives a VFH in a taxi business is not being licensed in the same manner.

Private Companies Carrying on a VFH Wheel Chair Accessible Van Business Without Any Requirement to Obtain a City Taxi Business Licence.

In the City of Toronto, there are several private companies such as Wheelchair Accessible Transit, Celebrity Wheelchair Accessible Transit, AVS Taxi to name just a few, who operate wheelchair accessible vans for hire in the City of Toronto without any City taxi business licence, which I have brought to the attention of the City on numerous occasions.

Although, the Executive Director of the ML&S Ms. Tracey Cook states the structure or wording is not presently contained in the by-law to license these companies and their drivers, that is not the case. They are operating a vehicle for hire business and the structure for licensing of these companies is in place under Chapter 546 as it is defined as *Licensing, Vehicles-for-Hire* and within the by-law, Article 5, Taxicab Owners has numerous sections that deal with accessible transportation, therefore the wording is there as well.

The licensing fee structure is also there under the Toronto Municipal Code Chapter 441, Fees and Charges, Appendix C, Schedule 12, reference numbers for a VFH taxicab broker's licence application and renewal fees being reference numbers 160 and 161 and for a VFH driver's application and renewal fees being reference numbers 443 and 444.

May I also suggest that Ms. Cook review the *entire definition of a taxi business in the federal Excise Tax Act, Definitions, 123 (1)* and if she does, please pay attention to "123 (1) (a) a business carried on in Canada of transporting passengers by taxi, or other "similar" vehicles for fares that are regulated under laws of Canada or a province." Since the City receives its right to license taxis from the Province, then obviously the City has the right to license these vehicles, so now Ms. Cook, you have additional structure and wording.

I am sure these companies and perhaps Ms. Cook will argue that since there is an exemption in the “Public Vehicles Act (“PVA”), R.S.O. 1990, c. P.54 Definitions, Operating licence required, Exception, (3) Subsection(1) does not apply to a person transporting only passengers with mobility disabilities in a public vehicle that is specifically equipped with a lift or ramp mechanism for the boarding of passengers with mobility disabilities, 2016, c. 5, Sched. 25, s. 2.,” they are exempted from requiring a municipal taxi business licence.”

But according to the Ontario Highway Transport Board who regulates and enforces the PVA, just because the Province does not require any special business licence to exclusively operate a wheelchair accessible vehicle, it does not preclude any municipality from requiring one. Once again. If their drivers are not required to have a VFH driver’s licence, then why am I or any other taxicab owner or driver required to have one?

This now raises the following question, if PTC’s and their drivers or the private wheelchair company van drivers do not require a VFH driver’s licence while operating within a taxi business in the City of Toronto, then why does any member of the established City taxi industry require the VFH driver’s licence? Also consider, the City presently has approximately 550 licensed Toronto Taxi Licences (“TTL’S”) who are all wheelchair accessible vans who require a VFH driver’s licence to drive in the City.

Conclusions:

What the City is refusing to accept here is there are two separate licences as described in the by-law involved in this case, one being a VFH owner’s licence and one being a VFH driver’s licence, which have the same rights as far as the driving of a vehicle is concerned where only one is required.

You must also include the fact that the City has private companies operating wheelchair accessible vans without the requirement of a VFH driver’s licence, who by federal definition are operating a taxi business.

On July 1, 2017, the Federal Excise Tax Act under Definitions, 123 (1) changed the definition of a *taxi business* to include “*if the transportation is arranged or coordinated through an electronic platform.*”

No longer can the City or any other municipality in Ontario or throughout Canada for that matter, try and hide the fact that companies like Uber and Lyft are operating a taxi business by categorizing them differently than the City’s established taxi business under the guise of being a PTC or their drivers as being PTC drivers.

With a federal statute defining what a taxi business is, Toronto’s and any other municipality’s governing by-law for this industry must follow suit as the federal Act’s definition supersedes any municipal by-law’s definition.

Since the City is not categorizing all of the entities operating a taxi business as described in the federal Excise Tax Act, who are mentioned either in or out of the by-law, in an equal manner, it raises the question, why should I or any other member of the Toronto taxi industry require a VFH driver's licence or any other applicable business licence if "parity" is not being applied in their licensing schemes?

By Toronto not applying equal taxicab business licensing requirements and applicable fees:

The City is violating the Charter of Rights and Freedoms, Equality Rights, 15.1, which in part states, "Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination."

With the City mandating certain entities within Chapter 546 to require a VFH driver's licence while others in and outside of the by-law are not and considering they all work in a taxi business as defined in the federal Excise Tax Act, this amounts to an abuse of licensing authorities under:

"City of Toronto Act, 2006 ("COTA"), Part II, General Powers, Powers, Broad Authority, City By-laws, 8. (2), 11. Business Licensing, 2006, c.11, Sched. A, s. 8 (2); 2006, c.32, Sched. B., 3 (1,2), 2, 2017,c. 10, Sched. 2, s.1" and considering those abuses of authorities, it has led to the following as well. A lack of consumer protection that is in violation of "COTA, Part II, General Powers, Powers, Broad Authority, City By-laws, 8 (2), 6. Health, safety and well-being of persons and 8. Protection of persons and property, *including consumer protection*"

Since this report shows the lack of caring; understanding; industry knowledge; fairness; unable to legislate a fair and level playing field for all; no concept of the end results of their actions; and legislating by autocratic rule by the City and I am sure many other Ontario municipalities doing likewise, an intervention is required since it is the Province who gives the right to license the taxicab industry under the Municipal Act, 2001 and in the case of Toronto, under the City of Toronto Act, 2006.

I remain,



Gerald. H. Manley