



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

TTC AS AN ESSENTIAL SERVICE

Date:	May 31, 2016
To:	TTC Board
From:	Chief Executive Officer
Reason for Confidential Information:	<ol style="list-style-type: none">1. This report is about labour relations and negotiations.2. This report contains information that is subject to solicitor-client privilege.

Summary

At the Board meeting of March 23, 2016, the Board requested a staff report relating to the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*.

The TTC has been an essential service since the enactment of the *Toronto Transit Commission Labour Disputes Resolution Act* in 2011. A component of the legislation passed to render the TTC an essential service requires a review of the legislation within a year of the fifth anniversary of the legislation coming into effect. The fifth year anniversary is March 2016. Amalgamated Transit Union, Local 113, the TTC's largest union, has contacted the Minister of Labour to initiate a review of the legislation. It is recommended that the TTC also request involvement in the review of the legislation.

Additionally, the union has recently filed a court application challenging the constitutionality of the legislation rendering the TTC an essential service. The union is seeking a remedy that the legislation be declared a breach of the *Canadian Charter of Rights and Freedoms* and be considered unconstitutional, and overturned. Two rounds of collective bargaining have taken place where the TTC and its bargaining units have been precluded from engaging in either a strike or lockout. In 2011, the parties went to interest arbitration following an impasse during collective bargaining with the union. At that time, the other unions agreed to the same terms and conditions as awarded. In 2014, the TTC reached different negotiated settlements with its four unions and without interest arbitration.

The TTC is seeking Board approval to contact the Minister to request it be involved in the review of the relevant legislation and participate in the process.

Recommendations

It is recommended that:

1. The Board receive the confidential information contained in Attachment 1.
2. The information contained in the confidential attachment remain confidential in its entirety as it contains information or communication that is subject to solicitor-client privilege.
3. The Board instruct staff to take steps to contact the Ministry of Labour in an effort to participate as appropriate in a review of the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*, S.O. 2011, c. 2,

Financial Impact

This report has no financial impact beyond what has been approved in the current year's budget. The Chief Financial & Administration Officer has reviewed this report and agrees with the financial impact information.

Accessibility/Equity Matters

The TTC recognizes the importance of its service to the city of Toronto and supports the notion of being able to provide continuity of service to the public without exception. Should TTC's current essential service designation be repealed, there is potential for the union to engage in a lawful strike, resulting in transit service to the people of Toronto being suspended. While this has the potential to negatively impact all TTC customers, it may have a significant and disproportionate impact on marginalized customers. For example, this may disproportionately impact individuals who have no other means to travel (including but not limited to individuals with low income, individuals with disabilities, seniors, youth, new Canadians, refugees and individuals living on the streets) and who rely solely on the TTC to get to medical appointments, treatment centres, hospitals, places of employment, places of worship, food banks, housing shelters, and other critical City of Toronto services.

Decision History

In 2008, the Board voted, based on staff recommendations, not to declare the TTC an essential service.

In a report dated September 22, 2008 the City Manager advised the Executive Committee of its options in terms of designating the TTC an essential service in a report entitled “Declaring the Toronto Transit Commission an Essential Service in Toronto (“2008 City Manager Report on TTC as an Essential Service”). The 2008 City Manager report on TTC as an Essential Service was received for information by City Council in October 2008.

At the TTC Board meeting on December 10, 2010, a member motion was approved by the TTC Board as follows:

That the Toronto Transit Commission hereby formally expresses its support for transit to be declared an essential service in Toronto, and that a review be undertaken at the end of the next five (5) years’ on this.

<http://www.toronto.ca/legdocs/mmis/2011/cc/bgrd/backgroundfile-34601.pdf>

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2011/January_12_2011/Minutes/index.jsp

The foregoing decision of the TTC Board was referred to the City of Toronto Executive Committee for consideration. The Executive Committee subsequently recommended to City Council that:

1. City Council formally request the Provincial Government to designate public transit in Toronto an essential service.
2. City Council request the Provincial Government to require a mandatory review of the designation of the Toronto Transit Commission as an essential service after five years time.

City Council at its meeting on December 16, 2010 had before it the recommendations of the Executive Committee; the 2008 City Manager report on TTC as an Essential Service as a reference document; the December 10, 2010 decision of the TTC Board as set out above; and a letter from then Mayor Rob Ford recommending that Council request the province to declare the TTC an essential service.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX1.8>

In dealing with this item, City Council approved that a formal request be issued from City Council to the provincial government to designate public transit in Toronto an essential service. Furthermore, City Council approved issuing a request to the provincial

government to require a mandatory review of the designation of the Toronto Transit Commission as an essential service after five years' time.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX1.8>

On February 22, 2011, the Province of Ontario introduced Bill 150, *Toronto Transit Commission Labour Dispute Resolution Act, 2011*, which received Royal Assent on March 30, 2011.

At the March 23, 2016, Board meeting, the Board requested that staff report back to the April 27, 2016 Board meeting on, (i) the Amalgamated Transit Union, Local 113 letter to the Ministry relating to the mandatory review of the *Toronto Transit Commission Labour Dispute Resolution Act, 2011*, (ii) alternative management responses, and (iii) the litigation action initiated by Amalgamated Transit Union, Local 113 relating to the constitutionality of the Act.

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/March_23/Reports/Decisions/%2326.%20Notice_of_Motion_Essential_Service.pdf

Issue Background

(a) Review of the Act:

In 2008, at the expiration of the then current bargaining agreement, the union engaged in a lawful strike resulting in all bus, streetcar and subway service being suspended. The strike ended after 36 hours upon the province enacting back-to-work legislation.

In 2011, at the request of City Council, and with the support of the TTC Board, the Province of Ontario enacted *the Toronto Transit Commission Labour Disputes Resolution Act, 2011*, which declared the TTC as an essential service. The Act was implemented prior to the expiration of the then current collective bargaining agreement.

The Act applies to the TTC as an employer, and all bargaining units representing TTC employees. The material impact of the Act is that the bargaining units and unions are precluded from engaging in any strikes and the TTC is prohibited from engaging in any lockouts. Should the parties reach an impasse during collective bargaining, the matter(s) would be referred to binding interest arbitration.

As requested by City Council, the Act also includes a mandatory review of the Act that is to occur within one year after the fifth anniversary of the Act coming into force and effect (March 30, 2016). Section 22 of the Act states as follows:

Within one year following the fifth anniversary of the coming into force of this Act, the Minister shall initiative a review of the operation of this Act and shall require a report on the results of the review to be provided to the Minister.

The union has recently written to the Minister of Labour to initiate a review of the legislation and seeking involvement in the review. This report seeks authorization for TTC staff to also contact the Minister of Labour in an effort to be consulted in the ministry's review and to indicate the TTC's continued support for the current legislation.

(b) Union's Court Challenge of the Act:

In October 2015, the Amalgamated Transit Union Local 113, the TTC's largest union representing all operators and many maintenance workers, filed a court application seeking a declaration, in part, that the Act violates the Charter and is not saved under Section 1 of the Charter. The union further seeks a declaration that the Act is unconstitutional and of no force and effect.

No court date has yet been set for the union's application.

The application names The Crown in Right of Ontario, as represented by the Attorney General of Ontario (i.e. the province) as the respondent to the application.

The TTC has been involved in discussions on the consideration of whether it ought to be considered an essential service since at least 2008. The TTC Board also formally endorsed its support for transit to be declared an essential service, which endorsement was included in the material before City Council when it requested the province to declare the TTC as an essential service. The TTC recognizes the importance of its service to the city of Toronto and believes that it ought to participate in any review to be conducted.

Contact

Gemma Piemontese, Chief People Officer
Brian Leck, Head Legal Counsel
Michael Atlas, Senior Solicitor
Megan MacRae, Director Employee Relations

Attachments

Attachment 1 – Confidential Attachment