

## **REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL**

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**Date of**

**Hearing:** April 27, 2017

**Panel:** Aly N. Alibhai, Chair, Melina Laverty and Daphne Simon, Members

**Re:** Ramin Jourj (Report No. 6685)  
Applicant for a Tow Truck Driver's Licence (Application No. B656347)

**Counsel for Municipal Licensing and Standards:** Mr. David Gourlay

### **INTRODUCTION**

1. Mr. Ramin Jourj ("Mr. Jourj") requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine if a Tow Truck Driver Licence should be issued, have conditions placed on it or if the application should be denied.
2. Mr. Jourj was not represented and was advised of his right to representation. He indicated that he understood that he had a right to be represented, but that he wanted to proceed without representation.
3. At the commencement of the hearing before the Tribunal, Counsel for MLS, Mr. David Gourlay, advised the Tribunal that the City's position was that Mr. Jourj should not be granted a Tow Truck Driver Licence.
4. The Tribunal concluded that Mr. Jourj's application for a Tow Truck Driver Licence should be denied.

### **FACTS**

5. The City called Ms. Olga Kuztelska, Supervisor with MLS, as a witness. Ms. Kuztelska was affirmed.
6. Ms. Kuztelska testified that she was familiar with MLS Report No. 6709 which had been prepared by her predecessor, Mr. Terry Van Elswyk, and that she had prepared the update to MLS Report No. 6709 dated March 10, 2017 at page 152 (MLS Report No. 6685).
7. MLS Report No. 6709, comprising of pages 1 through to 162 was entered into the record as Exhibit 1 without any objection.
8. Ms. Kuztelska testified to the contents of Exhibit 1 and in particular, the following:
  - Page 6 of Exhibit 1 is a 3-year Driver Record of Mr. Jourj from the Ontario Ministry of Transportation, which indicates that Mr. Jourj's Driver's Licence was suspended on August 16, 2011 (Suspension No. 1116366) and on February 2, 2012 (Suspension No. 2014079).
  - As indicated at page 6 of Exhibit 1, following a collision which resulted in a careless driving charge on November 21, 2010, it was only nine days later that Mr. Jourj was charged with failing to have his insurance card.

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- Page 11 of Exhibit 1 is another 3-year Driver Record of Mr. Jourj from the Ontario Ministry of Transportation, which indicates that Mr. Jourj's Driver's Licence was suspended on May 23, 2014 (Suspension No. 4076825) and on June 14, 2014 (Suspension No. 407824).
- Page 19 of Exhibit 1 is an Ontario Ministry of the Attorney General Integrated Court Offences Network (ICON) print out which indicates that on August 11, 2016, Mr. Jourj was charged with careless driving under the Highway Traffic Act and that, as indicated at page 152 of Exhibit 1, this resulted in a conviction of "Unsafe Turn/Fail to Signal on March 6, 2017.
- Mr. Jourj has not been licensed as a Tow Truck Driver by the City of Toronto since July 2011.
- Page 19 of Exhibit 1 at lines 2 to 6, lists offences on three different dates (January 8, and 20, 2016 and August 12, 2015), all of which occurred in a licensed tow truck.
- Page 20 of Exhibit 1 is a list of City of Toronto by-law infractions by Mr. Jourj, three of which occurred while he was operating a tow truck.
- Page 21 of Exhibit 1 includes a November 21, 2010 charge for careless driving under the Highway Traffic Act, which resulted in a conviction and involved a collision at the intersection of Don Mills Road and Skymark Avenue when Mr. Jourj was operating a tow truck.
- Pages 138 to 143 of Exhibit 1 are the Toronto Police Service Collision Field Notes with respect to the collision which occurred on November 21, 2010 when Mr. Jourj was operating a tow truck. The notes indicate, among other things, that the collision resulted in some damage to the vehicle that Mr. Jourj rear-ended, in one person being taken to the hospital and an independent third-party witness of the collision telling the police that the collision resulted in Mr. Jourj leaving a skid mark on the road of approximately 40 to 50 feet.
- The November 21, 2010 charge for careless driving is separate from the more recent careless driving charge of August 11, 2016, the former resulting in a conviction proper and the latter resulting in a conviction of a lesser offence as noted above.
- Page 20 of Exhibit 1 lists a fine of \$194 for a City of Toronto by-law infraction for "Unauthorized Suggestion" that remains outstanding.

9. Mr. Jourj did not cross-examine Ms. Kuzstelska.

10. Mr. Jourj called one of his current employers, Mr. Frank Zoghi, as a witness. Mr. Zoghi was sworn and testified as follows:

- He has known Mr. Jourj for five years and that they have worked "on and off" during this period of time.
- He operates a tow truck company and collision repair company, the latter being a 27,000 square foot facility.
- He has twenty-eight tow trucks as part of his tow truck company.
- Due to recent changes in the regulatory scheme for tow trucks in York Region as well as the fact that the volume of collisions is higher in the City of Toronto, Mr. Zoghi intends to have most of his fleet of tow trucks moved to the City of Toronto and to have them operate primarily in Toronto.

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- When he was a young person, he made a number of mistakes just like Mr. Jourj has made and that he learned from his mistakes and was given the opportunity to redeem himself and believes that Mr. Jourj should be given a similar opportunity to redeem himself.
- He got into the tow truck and vehicle collision repair business because of the mistakes that he made in the past because he was given an opportunity to “right his wrongs” and he was ultimately able to succeed in the tow truck and vehicle collision repair business.
- He took time away from work to be in attendance at the hearing because he too was in a similar situation as Mr. Jourj when he was young and he had been given a second chance and wanted to support Mr. Jourj in his efforts to obtain a tow truck driver licence and to work for his company.
- The equipment that he allows Mr. Jourj to operate as a tow truck driver in his company is very expensive, and worth over \$100,000. Because he feels that Mr. Jourj should be given a chance to prove himself, he was willing to pay the extra insurance costs which result from Mr. Jourj’s driving record.

11. Mr. Gourlay cross-examined Mr. Zoghi and during cross-examination, Mr. Zoghi testified as follows:

- He is not the owner of the two tow truck companies for which Mr. Jourj worked when he was previously charged with careless driving and other offences, including those in February 2017.
- His company currently operates exclusively in York Region and that since Mr. Jourj has been in his employ, he has not driven a tow truck in the City of Toronto.
- Mr. Jourj first worked for him for a short period of time in 2011 and 2012 at which time Mr. Jourj’s brother also worked for him.
- There was a gap of several years between the time Mr. Jourj first started working for him in 2011/12 and he resumed working for him in either February or March 2017.
- That it was his understanding, based on what he was told by his company’s insurance broker, that Mr. Jourj’s record of suspensions of his driver’s licence as set out in Exhibit 1 was not accurate, that the suspensions were linked to one another, but he admitted that he did not have any direct knowledge of Mr. Jourj’s record of driving licence suspensions being other than as set out in Exhibit 1. Further, he agreed that the different suspension numbers used in the Ministry of Transportation 3-year Driver Record appear to amount to different suspensions of Mr. Jourj’s driving licence.

12. Mr. Jourj was sworn and testified as follows:

- He got pulled over for speeding (in July 2013), and when they checked his license it had been suspended for unpaid fines, and so he was charged for driving while under suspension that day. When he was subsequently convicted, his license was suspended for six months. But he also got another 90-day suspension, for not surrendering his license to the Ministry of Transportation.

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- His record of driving licence suspensions as set out in Exhibit 1 is not accurate because in fact he forgot to turn in his driver's license to Service Ontario after he received a ticket for speeding and driving while under suspension in July, 2013 and, as such, when he went to obtain his driver's licence in November 2014 (after a period of suspension following convictions in May 2014), his driver's license was automatically again suspended for a period of ninety (90) days and, as such, he has not had his driver's licence suspended as many as four or five times.
- It is always the case that when one fails to turn in their driver's licence after it has been suspended that the province suspends it for an additional ninety days at the time one goes back to have it reinstated. He only realized this when he went to get his license reinstated.
- His most recent careless driving charge did not result in a conviction for that offence, and occurred while he was operating a motorcycle and only involved an improper lane change, which resulted in a conviction of the offence of an improper lane change.
- He made mistakes in the past when he was much younger and he regrets his mistakes and has learned from them.
- His 2010 careless driving charge which involved a collision resulted in very little damage to the vehicle he rear ended, the skid marks reported at pages 138 to 143 of Exhibit 1 are not accurate (they were not as long as described) and, in any event, could not have resulted from his application of the brakes, as only large trucks have air brakes and produce that type of skid mark, and although one person was taken to the hospital, the person was not in fact injured and only pretended to be injured after the police attended at the scene of the collision. He was driving 65 km/h and the speed limit was 60 km/h; he admits to having to stop quickly as the car pulled in front of him to make a left-hand turn.
- A number of the charges set out in Exhibit 1 on pages 19-21 were laid by the same officer and charges related to his operation of a tow truck on Highway 400 were laid by a police officer who wanted a friend who operated a tow truck to obtain the business that Mr. Jourj was getting when he was apprehended. In one case, he was given nine (9) tickets on the same day.
- Police officers do not like tow truck drivers and deliberately and unfairly target them.
- His father recently had a heart attack and his mother does not work and he is the only child who lives at home with his parents and therefore, he needs to operate a tow truck in order to earn a level of income that will allow him to support his parents and to pay for expenses associated with their mortgage, internet, telephone and the like.
- His other siblings do not live with his parents and they do not support his parents.
- While he has had jobs in construction and has also done work providing private towing services, he needs to drive a tow truck in order to make the income necessary for him to be able to assist and support his parents with their daily living expenses.

13. Mr. Gourlay cross-examined Mr. Jourj and during cross-examination, Mr. Jourj testified as follows:

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- When asked by Mr. Gourlay to explain the ninety (90) day driver's licence suspension to which he had referred when he testified, he was unable to clearly explain this on the basis of the information in Exhibit 1, but he denied that it was a further suspension of his driver's licence.
- The February 2017 Highway Traffic Act charges of "Drive Motor Vehicle Fail to Display Plates" and "Disobey Sign" which occurred while he was operating a tow truck and for which he has a court date in September 2017, came about because the tow truck he was operating had run into a snow bank and, as a result, the licence plates came off the tow truck.
- While he had indicated that there had been no damage to the vehicle he rear ended during the collision in 2010, he agreed, when asked by Mr. Gourlay, that there had been some damage to the other vehicle but stated that the skid marks referenced in the Toronto Police Service Collision Field Notes were not his skid marks.
- He acknowledged that one person was taken to the hospital after the collision in 2010 but insisted that the person was not injured and that the person was feigning to be injured and subsequently sued him for \$1.5M for personal injuries.
- When asked by Mr. Gourlay to explain why different officer badge numbers appeared on the ICON print outs for the different offences for which he was charged in Exhibit 1, he was not able to explain this although he had given testimony earlier that it was the same officer who had charged him with a number of offences.
- He needs approximately \$4000 to \$5000 per month to support his parents with their daily living expenses and his insurance as a tow truck driver costs approximately \$700 to \$800 per month and is paid by Mr. Zoghi.

## ISSUE

14. The issue before the Tribunal was whether, pursuant to Chapter 545-4 C of the Toronto Municipal Code<sup>1</sup> there are reasonable grounds to believe that Mr. Jourj will not carry on the business of a tow truck driver in accordance with the law and with integrity and honesty or that the carrying on of the business of tow truck driver by Mr. Jourj would result in the breach of Chapter 546-4 of the Toronto Municipal Code or if the conduct of Mr. Jourj affords reasonable grounds to believe that his carrying on of the business of a tow truck driver would infringe the

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<sup>1</sup> C. Grounds for denial of licence.

(1) An applicant for a licence, or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:

- (a) The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- (b) There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or.....

(e) The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.

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rights of members of the public or would endanger their health or safety. The Tribunal must also consider the requirement in Chapter 545-4 C.1 of the Toronto Municipal Code that MLS shall refuse to issue a licence where an applicant has not met the business licensing thresholds set out in Appendix K to Chapter 545, Section 1<sup>2</sup>.

## CITY'S EVIDENCE

15. In his closing submissions, counsel for the City asked that the application by Mr. Jourj for a Tow Truck Driver licence be denied as there are reasonable grounds to believe that Mr. Jourj had not conducted himself in accordance with the law, with honesty and integrity, or with due regard to public health and safety. In particular, the City submitted as follows:

- It is obvious from all the records included in Exhibit 1 that Mr. Jourj's poor driving record, for someone who wishes to professionally drive as a tow truck driver (including transporting members of the public in his capacity as a tow truck driver), poses very serious concerns for the City with respect to his ability to conduct himself as a tow truck driver in accordance with the law and with due regard for the safety of the public.
- At twenty-six years of age, Mr. Jourj is a young man and whereas it is often the case that where there is a pattern of offences, as there is in this case and the licensee is young, there is some evidence of a willingness to change behaviour, this is not such a case as Mr. Jourj has shown no indication of a desire to conduct himself in accordance with the law.
- Many of the offences for which Mr. Jourj was charged and convicted, including the offence of careless driving, occurred while he was operating a tow truck.
- Mr. Jourj has failed to take proper responsibility for his actions and instead of acknowledging the error of his ways, he has simply suggested that he was the subject of unfair and deliberate targeting by the police and MLS by-law officers, that he was stopped by a police officer on Highway 400 who had improper motives for apprehending him, that the same officers laid many of the charges against him, that the collision in which he was involved when operating a tow truck in 2010 did not result in much damage to the other vehicle, that the individual who was taken to the hospital was not in fact injured, that he was only charged at that time with careless driving because

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<sup>2</sup> Administrative thresholds for denial of licence. [Added 2004-01-29 by By-law No. 117-200452; amended 2004-06-24 by By-law No. 483-200453]

(1) In addition to the grounds set out in Subsection C of this section, the Municipal Licensing and Standards Division shall, with respect to applications received on or after July 1, 2004, refuse the issuance or renewal of a licence where an applicant has not met the business licensing thresholds as set out in Appendix K to this chapter.

1-C. The Municipal Licensing and Standards Division shall not issue or renew a licence but may recommend that the Toronto Licensing Tribunal issue or renew a licence on conditions if, at the time of an application for a licence or renewal, an applicant has:

.....

(vii) any restriction code 06 conviction that is more than three years old, but not more than five years old;

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the police have to charge someone and that the skid marks referred to in the Toronto Police Service records in Exhibit 1 are not skid marks of the vehicle he was driving.

- Although Mr. Jourj, as a young man, clearly faces challenging circumstances and is in a very difficult situation as the only child who is required to financially support and assist his parents, he should not be seen as a changed person, and he has not demonstrated that he has changed his behaviour.
- Mr. Jourj is a young man and has other ways available to him to earn a livelihood and in fact, he also has possible opportunities to earn a livelihood through employment in and around the towing industry including, for example, the provision of private towing services.
- There is a difference between the need to ensure that he is able to earn a livelihood and his ability to earn a certain amount of income.
- Mr. Jourj has a significant record of suspensions of his driver's licence, with the most recent suspension having concluded in June 2015.
- While it would seem that Mr. Jourj's history of suspensions of his driver's licence ought to have served to alter his pattern of non-compliance with the law, there is no evidence that he has changed his behaviour and in fact, he was very recently charged again with careless driving and in February of this year with other offences under the Highway Traffic Act.

## **APPLICANT'S SUBMISSIONS**

16. Mr. Jourj submitted that:

- his driving record would be cleared within six months; that he needs to operate a tow truck in order to financially assist and support his parents (including his father who recently sustained a heart attack and his mother who does not work);
- that his application for a tow truck driver licence was not about him but rather was all about his need to support his parents;
- that he needs to be given an opportunity to demonstrate that he can operate a tow truck in compliance with the law; and
- that if given the opportunity to operate a tow truck, he would never again be in breach of the law.

## **DECISION**

17. On the basis of the facts and the law as set out in these reasons and taking into account the mandate of the Tribunal to protect the public interest, the Tribunal decided, at this time, to deny Mr. Jourj's application for a Tow Truck Driver Licence.

18. The Tribunal concluded that Mr. Jourj's longstanding history and pattern of non-compliance with the law, as a tow truck driver over an extended period of time, including most recently in February 2017, coupled with the fact that he has failed to take full responsibility for his actions and to demonstrate a change in behaviour compelled the Tribunal to place greater emphasis on the need to protect the public interest by not granting a tow truck driver licence at this time, especially considering that Mr. Jourj is a young man and has other means available to him to earn a livelihood.

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19. In rendering its decision, the Tribunal remarked that should, in the future, Mr. Jourj decide to make application for a Tow Truck Driver Licence, he would be well advised to come before the Tribunal with a driving record which serves to clearly establish that he has, over a period of time, conducted himself with honesty and integrity and in accordance with the law, and has put his past behind him.
  
20. The Tribunal indicated that the passage of time would be to the benefit of Mr. Jourj and, in particular, that it would give him the opportunity, through his deeds and conduct, to demonstrate to the Tribunal and MLS that he is able to abide by the law, and that sufficient time has elapsed since any breaches of the law and therefore, that the public interest grounds for the denial of his Tow Truck Driver licence application as set out above are no longer as relevant as they were to the Tribunal in considering his application made on August 12, 2016.

Originally Signed

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Aly N. Alibhai, Chair  
Panel Members, Melina Laverty and Daphne Simon concurring

[Reference: Minute No. 130/17]

**Date Signed:** June 22, 2017