

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: January 5, 2017
Panel: Moira Calderwood, Chair; Melina Laverty and Daphne Simon, Members
Re: Remodex Inc. (Report No. 6688)
Applicant for a Building Renovator Licence (Application No. B649879)

Counsel for Municipal Licensing and Standards: Mr. David Tortell

Counsel for Applicant: Mr. Brian Sherman

INTRODUCTION

Remodex Inc. (“Remodex”), Mr. Antonio Leo, President, applied to Municipal Licensing and Standards (MLS) of the City of Toronto for a building renovator licence.

MLS turned down the application.

Remodex appealed MLS’s decision and the Toronto Licensing Tribunal held a hearing about this on January 5, 2017. The Tribunal heard witnesses and reviewed documentation. All witnesses were sworn or affirmed.

Issue

Remodex asked the Tribunal to grant it a building renovator licence. MLS opposed this request, due to Mr. Leo’s past conduct, which included criminal convictions.

Testimony of Ms. Kuztelska

Ms. Olga Kuztelska, Supervisor, MLS, testified on behalf of MLS. Through this witness, MLS submitted into evidence Report No. 6688, and it was marked as Exhibit 1. Ms. Kuztelska’s colleague, Mr. Van Elswyk, Supervisor, Licensing Services, prepared and signed Report No. 6688.

Through this documentation, plus her testimony, Ms. Kuztelska told the Tribunal:

- Mr. Leo’s criminal record includes a 2012 conviction for sexual interference, and a 2011 conviction for failure to comply with a bail condition.
- Further, MLS obtained information showing that Mr. Leo was charged in 1996 with six offences, including assault, assault with a weapon, sexual assault, and three counts of theft under \$5,000. All charges were withdrawn.

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- Ms. Kuztelska testified that, when preparing reports for the Tribunal, MLS regularly sends requests under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* to police forces attempting to obtain further information about certain offences. She stated that they did so in this case, and that information of this type contained in Report No. 6688 constitutes the information that the police released. She added that MLS does not have any control over what information police forces decide to release.
- In cross-examination, Ms. Kuztelska acknowledged that she does not have any personal knowledge of the events described in Report No. 6688.

Testimony of Mr. Leo

During the course of his direct testimony, Mr. Tortell's cross-examination, and Mr. Sherman's re-examination, Mr. Leo provided further information with respect to his background, his current circumstances, and his criminal record. Through Mr. Leo, the following documents were marked and entered as exhibits:

Exhibit 2 – WSIB e-clearance for Remodex

Exhibit 3 – Wawanesa Insurance information respecting Remodex

Exhibit 4 – unsigned letter dated December 5, 2016 from Remodex client Ms. W

Exhibit 5 – example of a Remodex quotation for work and contract documentation.

General information

- Mr. Leo told the Tribunal that he is 46 years old and has worked as a renovator for 18 years. He is a general contractor. He is the President of Remodex
- Mr. Leo stated that his crews do about 80% of the work at job sites, while he attends for about 20% of the time. He said that he initially meets with the client to define the scope of work, produces estimates, obtains the equipment and materials, and decides what crew is needed for the job.
- Mr. Leo said that up until 2008, he worked in Toronto, and then in 2009 began working in Hamilton. He said that a motorcycle accident in 2010 reduced his ability to work during a long period of recovery. Mr. Leo stated that 2015 was his first year back to full-time work and that in 2016 he applied for a new licence for his corporation, Remodex. He stated that in April 2016, his business obtained a licence to work in Brampton. Mr. Leo estimates that he is now 80% healthy.
- In cross-examination, Mr. Tortell asked Mr. Leo how he reconciled Exhibit 4, in which customer Ms. W congratulates him on his work over five years, with his evidence that he was injured and unable to work for some years after 2010. Mr. Leo responded that while his ability to work was reduced, he did some work to test his limits although at times he would have to stop. He stated that he did the work for Ms. W during such trial return periods. When Mr. Sherman asked Mr. Leo, in re-examination, for further details about the work done for Ms. W, Mr. Leo stated one project was done in March-April 2011, another about two years later, and one more recently, in June or July last year. When Mr. Sherman asked who

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actually did the work at Ms. W's premises, Mr. Leo was able to provide and spell the names of about seven employees, stating that he (Mr. Leo) attended to assist.

- In cross-examination, Mr. Leo acknowledged that he previously worked as a silk-screener.
- In response to a question from the panel, Mr. Leo clarified that he legally changed his surname from "Leow" to "Leo."

June 1996

- With respect to criminal charges which were laid in 1996 but withdrawn, Mr. Leo explained that he had been dating a woman, Ms. J, for about four or five years, but the relationship fell apart. He stated that he and Ms. J did not live together. Mr. Leo said that he was at Ms. J's home in June 1996 when police officers attended and told him a complaint had been filed. He was arrested. Mr. Leo asserted that he did not know the nature of the alleged offences until he received Crown disclosure.
- According to page 7 of Report No. 6688, the charges included assault, assault with a weapon, sexual assault, and three counts of theft under \$5,000. Mr. Leo recalled that he went to court, the case was called up and the charges were withdrawn. He does not know the reason for the withdrawals.
- Mr. Leo stated that none of the information in the police reports that led to the laying of the 1996 charges was true.
- Mr. Leo stated he has had no further contact with Ms. J since that time.
- In cross-examination, Mr. Leo stated several times that he was not sure of the date in June 1996 that he was arrested.
- With respect to the three theft charges in 1996, Mr. Leo said they related to banking transactions but that he never made the bank withdrawals alleged.
- In cross-examination, Mr. Leo acknowledged he was at Ms. J's house when arrested, but insisted there was no violence, no sexual activity and no aggression on his part. He thinks Ms. J had called the police before he went to her house, and they attended after he had been there for about an hour.
- In cross-examination, Mr. Tortell directed Mr. Leo's attention to page 66 of Report No. 6688, a Surety Warrant. It shows that a Mr. HL had posted bail for Mr. Leo in the amount of \$10,000, with respect to the 1996 charges. The document states that on March 11, 1997, Mr. HL "now wish[es to] be reli[e]ved of their obligations as the accused is not following his bail recognizance conditions." In re-examination by Mr. Sherman, Mr. Leo stated that Mr. HL, a relative, wished to be relieved from his obligations as surety as he (Mr. HL) wanted to sell his

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house. He denied that he had any problems meeting his bail conditions. Mr. Leo added that someone else became his surety.

July 1, 2010

- With respect to the criminal charges from July 2010, Mr. Leo stated that he was in a common-law relationship with Ms. MT from 2000 until 2005/2006. They lived together, with Ms. MT's daughter, Ms. ST; Mr. Leo's niece, Ms. Lauren Leow (who testified later in the hearing); along with Ms MT's brother, and Ms. MT's sister's daughter.
- Mr. Leo stated that in February 2007, Ms. MT came to his home, broke things and threw things around. He said that when Ms. Lauren Leow came home, Ms. MT attacked her. He stated that he left, taking Ms. Lauren Leow with him, and attended the police station. Mr. Leo recalled that the police attended the house, but that Ms. MT had left by the time they got there.
- Mr. Leo recalled that in 2009, Ms. MT called and asked him to take the kids out, and that he took Ms. ST and his niece, with others, to a Chinese restaurant in Markham.
- Mr. Leo stated that in the last two weeks of June 2010, Ms. MT called and sent him messages, and that they met at a restaurant, but he did not stay.
- Mr. Leo said that on July 1, 2010, Ms. MT again called and left messages, and said, "You need to come and get your daughter," actually meaning her own daughter, Ms. ST, who, in 2010, was about 14 years old. Mr. Leo stated that after work, he got his truck, then went to Ms. MT's house to find Ms. ST waiting outside. Ms. ST stated that she wanted to talk. She got into his truck. They went to a restaurant as he was hungry, and he ate, but Ms. ST did not. He recalled that they engaged in "small talk" and that Ms ST did not wish to discuss her problems. Mr. Leo stated that Ms. ST was texting her mother throughout the evening.
- Mr. Leo said that when he was driving Ms. ST home, she asked to stop at Bluffer's Park. He turned in and they parked in the parking lot which was crowded and well-lit. They stayed at Bluffer's Park for about 20 minutes, then he dropped Ms. ST home.
- Mr. Leo stated that he was subsequently arrested and charged with sexual assault. When he obtained Crown disclosure, he learned that he was alleged to have touched Ms. ST in the back seat of his truck at Bluffer's Park. He denies that this ever happened.
- Mr. Leo provided a number of details to support his position that he had not been in the back seat of his truck with Ms. ST (for example, that the back seat was partially folded up to accommodate work tools, that his jacket and motorcycle helmet were also in the back seat, and that there was no room for two people in the back seat, or for him to stretch out his legs, as alleged).

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- He denies touching Ms. ST or engaging in any conversation of a sexual or suggestive nature.
- As already noted, Mr. Leo stated that on August 28, 2010, he was involved in a serious motorcycle accident which reduced his ability to work. He said that by the time of trial of these charges in 2012, his savings were depleted and he could not afford a lawyer, although he had to have a lawyer to cross-examine Ms. ST, and was able to get a Legal Aid certificate for that representation.
- Mr. Leo acknowledges that he was convicted on the lesser, included offence of sexual interference. He believes that Ms. MT felt hostility and anger towards him after their breakup, which motivated her and Ms. ST to have him charged.
- Mr. Leo stated that he was sentenced to ten days' imprisonment, which he served over two weekends. He said he was on probation for one year and must remain on the Sex Offender Registry for ten years.

October 1, 2011

- Mr. Leo stated that he went to dinner that evening at the home of his sister and brother-in-law. The brother-in-law's 14 year-old daughter was also present, a fact which Mr. Leo says he did not know about beforehand. Mr. Leo's brother-in-law experienced chest pains and Mr. Leo drove him, along with his daughter, to the hospital. Around 2 a.m., when they were driving home, the police stopped him as his tail light was broken. Because the 14 year-old girl was in the vehicle, Mr. Leo was charged with breach of probation, and later convicted. Mr. Leo acknowledged that he had not made payments on the truck and the plates were "pulled."
- In cross-examination, Mr. Leo further acknowledged that he was driving that evening without automobile insurance, although he stated that he thought he may be covered through his work insurance. When Mr. Tortell directly asked Mr. Leo if he had lied to the police about being insured, Mr. Leo stated that he did not lie, but was unsure about his insurance status.
- Mr. Leo further acknowledged, in cross-examination, that his estimate of the time of these events (2 a.m.) did not appear accurate, when compared with the police report found at pages 53-54 of Report No. 6688.

Testimony of Ms. Roseanna Ferouz

Ms. Ferouz was not present in the hearing room during Mr. Leo's testimony.

Ms. Ferouz provided information including the following:

- She has been acquainted with Mr. Leo since 1994. They have lived together continuously since 2012. They are in a stable relationship.

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- Mr. Leo is not aggressive or mean. He is kind and helpful. He is always laughing. He is always willing to help.
- She is 46 years old.
- She has no direct knowledge of the incidents in 1996, 2010 or 2011.

Testimony of Ms. Lauren Leow

Ms. Leow was not present in the hearing room during Mr. Leo's or Ms. Ferouz's testimony.

Ms. Leow provided information including the following:

- She is Mr. Leo's niece. He raised her from the time she was about 9 years old.
- She does not have much recollection of the allegations from 1996, other than she remembers her mother crying about this.
- When she and Mr. Leo lived with Ms. MT, Ms. MT made things difficult for her. She felt like the "black sheep of the family."
- She has never seen Mr. Leo act in an aggressive or violent manner. His demeanor is calm and nonchalant.
- Ms. Leow acknowledged that she has no personal knowledge of the events of 1996, 2010 or 2011.

SUBMISSIONS

Mr. Tortell stated that the Tribunal should not issue a building renovator licence to Remodex. MLS had concerns about Mr. Leo's honesty and integrity, and about public safety.

MLS submits that concerns about public safety arise from Mr. Leo's July 2010 conduct, which resulted in the 2012 conviction. MLS does not believe Mr. Leo's assertion that the conviction was based on a total fabrication by Ms. MT and Ms. ST. MLS pointed out that Mr. Leo was convicted on one charge arising from this incident and stated that the criminal trial judge must therefore not have believed Mr. Leo's version of events. MLS noted that the charges laid but withdrawn in 1996 also involved criminal behaviour of a sexual nature, suggesting a pattern.

MLS submitted that concerns about Mr. Leo's honesty and integrity arise from inconsistencies in Mr. Leo's testimony, and the fact that his evidence was not credible. For example, MLS stated that Mr. Leo's position that nothing happened in July 2010 is inconsistent with the acknowledged conviction. MLS also stated that Exhibit 4, the letter

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from a satisfied customer, was inconsistent with Mr. Leo's evidence that he was unable to work for a period following his 2010 motorcycle accident.

MLS noted two instances in the record of Mr. Leo's failure to comply with bail conditions; the first being the surety's March 1997 request to be released, which documents that the surety stated "the accused is not following his bail recognizance conditions"; and the second, the 2011 traffic stop. MLS stated that the latter further shows Mr. Leo's lack of honesty, in that he lied to the police officer about the status of his automobile insurance. MLS stated that even if it is true that Mr. Leo was unaware his insurance had lapsed, then he was negligent in failing to ensure his insurance was in good standing, and that this raises concerns about his integrity.

MLS believes that Mr. Leo has the ability to make a living in other jurisdictions, or that he could return to work as a silk-screener.

MLS argues that there is no prejudice in denying the licence, and that the interests of public safety and having licensees conduct themselves with honesty and integrity outweigh Mr. Leo's interest in making a living.

Mr. Sherman submitted that the Tribunal should issue a building renovator licence to Remodex. He questioned whether Mr. Leo represented a threat to the public, in the past, and whether he does now.

Regarding the 1996 and 2010 incidents, Mr. Sherman noted that Mr. Leo was in two different romantic relationships, each of which ended badly, and that it is impossible to know to what extent the complaints brought to the police in each of those instances were based on truth versus anger and revenge.

With respect to the 1996 charges, Mr. Sherman noted that on June 18, Ms. J invited Mr. Leo to her home, where he was arrested, and that it is unlikely she would have done so had he sexually assaulted her a few days previously, on June 13. Mr. Sherman noted, further, that the police synopsis about this incident was based solely on what the complainant told them, as the police did not have any further information at that point. He commented that the only information from a police officer who had directly-observed information about an offence came from the police officer who made the 2011 traffic stop, and that that officer documented that "At all times while dealing with police, Mr. Leo was polite, courteous and co-operative."

Mr. Sherman submitted that Mr. Leo's testimony was not evasive, not contradictory, and was frank, honest and uncontested.

With respect to the 2010 incident that led to the 2012 conviction, Mr. Sherman submitted that while Mr. Leo was convicted of sexual interference, and while doubtless any sexual offence is serious, this conviction is on the milder end of the spectrum of sexual offences. Mr. Sherman pointed out that Mr. Leo spent only two weekends in jail, and there was no victim impact statement. Mr. Sherman reiterated that, in any event, Mr. Leo's position is that the actions alleged did not take place but rather, that he was "set up." He disagrees that because there are two such situations arising from the ends of relationships, Mr. Leo's explanations must be false.

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With respect to Exhibit 4, Mr. Sherman submitted that the fact Mr. Leo did some work for this client over the years after his motorcycle accident was not inconsistent with his evidence that he undertook some work while recovering.

Mr. Sherman submitted that the documents exhibited show that Mr. Leo runs a “classy” business, not “off the back of an envelope.”

Mr. Sherman stated there is no evidence that Mr. Leo poses any danger to the public now. He is in a stable relationship of four years standing. He has paid for the crime he was convicted of, and has had no problems since. He is older and wiser, and running a professional business.

Analysis and decision

The Tribunal decided to grant Remodex a building renovator license, with a probationary period and conditions.

In reaching our decision, we applied the Tribunal’s mandate, set out in part in the *Toronto Municipal Code*, § 545-3.B(3), subsection (c):

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

Protection of the public interest

The 1996 charges were withdrawn. The Tribunal really had no way of determining what happened on that occasion. The only person with direct information who testified was Mr. Leo himself, and he denied that the assaults, etc., happened as alleged. We take Mr. Sherman’s point that the documentary information contained in Report No. 6688 regarding the 1996 charges is based only on the complainant’s information as recorded by the police. Mr. Leo and any other witnesses he may have had would have had their opportunity to tell their side at trial, but the charges were withdrawn, so any such information is not on record.

Further, any criminal conduct that Mr. Leo engaged in, in 1996 (and we are not making a finding that he did), would have happened over 20 years ago. The Tribunal grants licenses to applicants with a criminal conviction (and again, Mr. Leo was not convicted on this occasion) twenty years in the past, who have not gone on to show a continuing pattern of serious conduct issues.

The July 2010 incident which led to the 2012 conviction is concerning. The Tribunal struggled with whether all of the information before us about this incident would lead us to conclude that Mr. Leo posed a threat to the public interest. In the end, we concluded it did not, for the following reasons:

- Mr. Leo steadfastly denied the conduct alleged to have happened at Bluffer’s Park on July 1, 2010. He offered a variety of details about what happened that night to support his position.

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- The police evidence in this matter, included in Report No. 6688, is a synopsis which officers prepared a couple of days after the fact, presumably after speaking to the 14 year old female complainant and/or her mother. The police officers involved in the investigation were not witnesses to what occurred at Bluffer's Park on the evening of June 30-July 1, 2010.
- The conviction was not for sexual assault, but was for the lesser, included offence of sexual interference (an offence defined in the *Criminal Code* to include direct or indirect touching of any part of the body of an individual under 16 years of age).
- Mr. Leo's sentence was ten days of imprisonment, apparently served over two weekends. Again, this suggests to us that the sentencing judge considered this to be on the lower end of the spectrum of sexual offences.
- The events that are alleged, if they did take place, took place over 6 years ago

The October 1, 2011 occurrence (fail to comply with recognizance) appears to have been a technical breach and according to the information at page 6 of Report No. 6688, resulted in a one-day sentence. Further, we noted from the information at pages 53-54 of Report No. 6688 that the entire incident took place in the presence of the father of the 14 year-old girl. We were satisfied with Mr. Leo's explanation that he took the girl along to the hospital as she was concerned about her father, who was experiencing chest pains. We noted that police documented on page 54 of Report No. 6688 that:

Mr. Leo was subsequently transported to Quinte West detachment and [redacted] (who vehemently refused to cooperate with the officers by providing a statement) and [redacted], were driven home.

Thus it appears that either the 14 year-old girl or her father "vehemently refused to cooperate" with police. A refusal by either appeared to us to support Mr. Leo's claim that the entire incident had an innocent explanation.

Taken in its entirety, the information before the Tribunal was not enough to persuade us that Mr. Leo is a current danger to the public. There is no information suggesting any further criminal charges or convictions since the last (2011) occurrence, no record of driving offences and no information about offences or complaints connected to Remodex's business licence in Brampton. There is information from Mr. Leo, Ms. Ferouz and Ms. Leow that Mr. Leo lives a stable, settled life in a solid domestic relationship.

With respect to the other half of the test set out in the Tribunal's mandate, the need for licensees to make a living, there was no information before the Tribunal respecting Mr. Leo's prospects of making a living as a silk-screener, and that was an occupation he had from 1992-1997, about 20 years ago. Mr. Leo mentioned in passing his current business's truck, tools and equipment, which must represent a significant investment. And while there was no specific evidence before the Tribunal regarding the financial prospects for a renovation business in Toronto versus Brampton, it is logical that the Toronto market would be larger and therefore more lucrative, given that Toronto is a much larger city than Brampton.

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Honesty and integrity

The Tribunal also put its mind to the concerns which MLS expressed about Mr. Leo's honesty and integrity, as set out in the *Toronto Municipal Code*, § 545-4, subsection (1) (a), (b), (c) and (e).

We found Mr. Leo's evidence straightforward and his demeanour to be, as described by his witnesses (and in the documentation respecting the October 2011 traffic stop, by the police) calm and cooperative. Mr. Leo did not appear to be defensive or angry, even when being questioned about sensitive issues.

We did not find instances where Mr. Leo's testimony contained troubling discrepancies. He was mistaken in saying the October 2011 traffic stop took place around 2 a.m., but that did not strike us as a particularly significant detail. Nor did we find that Mr. Leo's evidence he had to reduce his work due to injuries after his August 2010 motorcycle accident was inconsistent with the evidence in Exhibit 4, that he did work for Ms. W during that period. We did not understand him ever to say that he was completely unable to work.

We accorded very little weight to the March 1997 document showing that Mr. HL wished to be relieved of his obligations as surety because Mr. Leo was not following his bail recognizance conditions. This was a 19-year old document recording a bare allegation by Mr. HL, in support of the outcome that Mr. HL was seeking. This information was not, in our view, strong enough to raise questions about Mr. Leo's integrity, particularly about his integrity in 2017. There was no information before the Tribunal to show that Mr. Leo in fact failed to follow any conditions imposed at the time of the 1996 charges.

Mr. Leo submitted evidence to show that he is operating his business with integrity (for example, by having the requisite WSIB and insurance coverage). He is currently operating his business in another jurisdiction and we are aware of no complaints or issues arising from that enterprise.

Probation

Although we did not decide that Mr. Leo is currently a danger to the public, out of an excess of caution, and taking into account that the offence, which did result in a conviction, was of a sexual nature and involved a minor, we are of the view that the public will best be protected by imposing a period of probation with conditions.

DECISION

For the reasons set out above:

Remodex will be issued a building renovator's licence, subject to the following conditions:

- Immediately upon being issued, the licence will immediately be placed on probation for a period of three (3) years, commencing on the date of issuance.

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- Prior to each of the next three renewals of the licence, Mr. Leo must provide to MLS, at his own expense, an updated abstract of his criminal record.
- During the probationary period, if Mr. Leo incurs any new charges or convictions under the *Criminal Code*, or if Mr. Leo or Remodex incur any new charges or convictions under the *Toronto Municipal Code*, Mr. Leo must notify MLS, in writing, within three (3) business days, in one of the following ways:
 - in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1
 - via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1
 - via email to mlsconditionreporting@toronto.ca, or
 - via fax at 416-392-3102.

During the probationary period, if MLS has concerns with any new charges or convictions, it shall bring those matters and report No. 6688, and any updating material, back before the Tribunal for a full hearing.

Originally Signed

Moira Calderwood, Chair
Panel Members, Melina Laverty and Daphne Simon

[Reference: Minute No.3/17]

Date Signed: September 7, 2017