

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: January 22, 2015

Panel: (Hedy) Anna Walsh, Chair; Moira Calderwood and Ted Yao, Members

Re: Mirza Muhammad Saqib Bilal
Applicant for a Taxicab Driver's Licence (Application No. 417534)

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

INTRODUCTION

The Applicant waived his right to legal counsel and acknowledged his understanding of the matter before him.

He was first licensed on September 23, 2005 and his licence was canceled on December 24, 2008. On January 13, 2014, the Applicant submitted an application No. B417534 for a taxicab driver's licence. MLS advised the Applicant that his license would be the subject of review by TLT, following receipt by Municipal Licensing and Standards, (MLS) of his Record of Conviction, dated June 2, 2014, as part of his application process.

He requested a hearing before the Toronto Licensing Tribunal (TLT) to determine whether or not a taxicab driver's licence should be issued to him, or have conditions imposed on it, or if the application would be denied.

After hearing the evidence submitted by the City and by the Applicant, as well as the submissions of both parties, TLT ordered that a taxicab driver's licence be issued to the Applicant, subject to the probationary conditions set out hereafter.

CITY'S EVIDENCE

The City called one witness to testify on its behalf.

Ms. Allison Wolfe, who was duly sworn, identified herself as Supervisor of Licensing Services with (MLS). She testified that Report No. 6261, dated October 8, 2014 had been created by MLS staff that she had reviewed it and could attest to its contents. The report was entered into the record as Exhibit 1.

Her testimony continued as follows.

As part of his current application, the Applicant submitted to MLS a Record of Conviction, dated June 2, 2014, from the Royal Canadian Mountain Police, revealing criminal convictions of "Dangerous Operation of a Motor Vehicle Causing Death" and

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"Dangerous Operation of Motor Vehicle Causing Bodily Harm". Ms. Wolfe referred to the following portions of Report No. 6261:

Pages 4-5, a RCMP National Criminal Records document, dated June 2, 2014 displaying the Applicant's photo, positive identification to fingerprints and record of three convictions under the Criminal Code and disposition of 16 months sentence and prohibition of driving for three years, dated December 20, 2010.

Page 9, a Driver's Abstract, dated October 8, 2014 of the Applicant's licence to drive from 2011-2014 in the province of Ontario, with no convictions, with a requirement for authorization to operate air brakes.

Page 10, an updated records of The Ministry of the Attorney General's Integrated Court Offences Network (ICON) report, dated 2014, prepared by MLS staff, with a chart revealing two unpaid fines and two by law convictions, of no trip sheet in the operation of a commercial vehicle and public intoxication unrelated to the operation of a motor vehicle. There is a typographical error of 89213, as noted on page 11.

Page 11, displaying a taxicab licence issued in 2005 and cancelled in 2008.

On cross-examination, the witness referred to:

Page 21, a chart, in respect to the Toronto Municipal Code Chapter 545, Licensing Appendix K-Schedule A Offences and Corresponding Restriction Codes: 06 Dangerous Operation of Motor Vehicles, corresponding to 1C7 in Saskatchewan.

Page 19, an extract from Article 1, City of Toronto Municipal Code, Chapter 545. Section 545-4 Licences, applications and renewals. Section 4C, grounds for denial of licence and 1-C Appendix K to Chapter 545. Business Licensing Thresholds. 1-C.

The Applicant declined to cross-examine Ms. Wolfe and acknowledged that all of the evidence adduced by the City was correct.

APPLICANT'S EVIDENCE

The Applicant was duly sworn and testified to the contents of the report. He acknowledged his convictions and reported the accident which gave rise to the charges, occurred on October 10, 2008 in Rosewater, Saskatchewan, while he was driving a rental car. He revealed driving on a single lane highway and hitting another vehicle head on while passing another vehicle. He was in a coma for 4-5 days and has difficulty recalling the accident. He describes becoming angry when thinking back to that time, "every time I think of it, my blood boils." Although the words on their face sound as if he is seeking to blame someone else, his evidence as a whole suggests that what he meant was that this was a pivotal event in his life, for which he takes complete responsibility and that every time he thinks of it, he cannot escape feeling anguished for the tragic deaths and human suffering he has caused. He emphasized that his life

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changed since the accident and that he can no longer engage in hard physical labour, as a result of pain in his right leg. He reports being diagnosed after the accident, with posttraumatic stress disorder (PTSD).

He reports having a wife and 15-month-old son with a congenital heart defect in Pakistan. He is the sole supporter of his family and has no other means of support.

He claims to be remorseful for his past wrongdoings and fully agreeable to complying with any future order of the TLT.

On cross-examination, the Applicant confirmed the accuracy of the charges and criminal convictions. He reports no recollection of the accident as a result of losing consciousness at the time and says that according to court documents, three cars were involved, one of which was unharmed. He claims that according to reports, he swerved on a two lane highway, hitting the oncoming vehicle and then rolling into a ditch.

He reports that two other occupants in his car were injured, transported to hospital and discharged after two days. He remained in hospital in a coma for 4-5 days. Two occupants in the other car died resulting in the charge of "dangerous operation of motor vehicle causing death bodily harm" and a third occupant of that car was injured, resulting in the charge of "dangerous operation of motor vehicle causing bodily harm". He served 11 months in jail, with no probation and received a 3 years driving prohibition from the date of conviction.

He was born in 1986 and was 22 years of age at the time of the accident. He completed a drivers' training course while on probation in Saskatchewan, but is not licensed there.

He reports having arrived to Toronto, Ontario, Canada from Pakistan in 2000 and was a student until 2005. He worked as a cab driver in Toronto until 2008, before moving to Saskatchewan in 2008, to pursue a 10 month electrician course and was an apprentice electrician at the time of the accident. He was released from jail in 2011 and returned to Toronto in 2012 and applied for a licence on January 13, 2014. He reports having visited Pakistan 2 1/2 years ago and having returned to Canada eight months later.

He reports that he has a drivers licence, but has no access to his own vehicle and drives a friend's vehicle approximately 2-3 times a week and is insured as an occasional driver.

He reports no accidents or tickets since the issuance of his driver's licence. He worked as a security guard from July 2013 until December 2014 and is currently on medical leave. He requested a letter and receipt be entered into evidence as exhibits. A letter from Magnum Security, confirms his record of employment, that he is on medical leave and that he has proven to be a reliable and responsible employee. This was entered into the record as Exhibit 2. A Canada Post MoneyGram receipt to his uncle in Pakistan, for \$850 was entered into the record as Exhibit 3. He claimed this was an average monthly sum he sends to Pakistan, to cover his son's medical care.

He reports that extreme cold and prolonged weight-bearing aggravate his right leg. He reports wanting to sponsor his wife and son and being unable to currently cover the cost. He reports having worked as a taxi driver in the past and that driving a taxi cab is within his physical ability.

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He claims to not experience difficulties related to his PTSD with either driving or coping with stress. He claims that his initial symptoms of general anxiety and recurring nightmares improved since receiving medical care. Although he reports having suffered an orbital fracture at the time of the accident, he claims to have no visual disturbances. He denies taking any medications, other than an anti-inflammatory medication for pain and reports no side effects from it, such as drowsiness or difficulty operating machinery.

He reports being initially sent to different sites as a security guard, but then provided with a steady site, where he worked 35 hours a week. He claims to be no longer able to work as a security guard, as it involves prolonged weight-bearing and exposure to cold temperatures, all of which aggravate the pain in his leg. He expects to be able to work 50-60 hours a week as a taxicab driver and has no other work prospects.

He claims to have a prospective job as a taxi driver and could arrange for insurance.

He did not call any other witnesses to testify on his behalf.

CITY'S SUBMISSIONS

In his closing submission, counsel for the City expressed the view that there were reasonable grounds to believe that the Applicant had not complied with the law and was a danger to the public. He stated that if the TLT were to accept the Applicant's clean driving record, then it must be considered relative to his three-year prohibition of driving. It was the City's submission that a probationary period with appropriate reporting requirements should be ordered, to uphold public safety if the licence were to be granted.

APPLICANT'S SUBMISSIONS

The Applicant claimed to no longer be able to physically work as an electrician or security guard and had no other prospects of employment. He expressed remorse for his past wrongdoings and promised to comply with any future order of the TLT.

DECISION

The above evidence, supporting the Applicant's past conviction raise a concern for the TLT, especially in respect of the duty to protect the public. His criminal convictions of "Dangerous Operation of Motor Vehicle Causing Death" and "Dangerous Operation of Motor Vehicle Causing Bodily Harm", are directly related to the breach of the Business Licensing Thresholds under the City of Toronto Municipal Code, Chapter under the City of Toronto Municipal Code, Chapter 545, Section 545-4, Subsection C. 1 (1) and Appendix K to Chapter 545, Section 1-C (vii) and (viii). Accordingly there were concerns relative to Sections 545-4 C (1) (a) (b) and (e) to believe that he has not carried on or will not carry on his business of conducting a taxicab with integrity and honesty.

Furthermore, appendix K to Chapter 545 provides for the Business licensing thresholds to be applied as it relates to a careless driving restriction code 06 in the issuance or renewal of the licence.

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

(viii) any restriction code 06 convictions within the last three years;
(careless driving restriction code 06)

The TLT, in its deliberations also considered the applicant's need to make a livelihood within his physical means.

Chapter 545-3B (3), subsection (c) requires the TLT to balance the protection of the public interest with the need for licencees to earn a living.

The Applicant reiterated several times during his testimony, that he had no other means of support.

Section 545-6 (C) (2) of the *Toronto Municipal Code* gives the TLT the authority to impose conditions on a licence as it considers appropriate and as are authorized by law. The placement of conditions on a licence is done to correct behavior.

The rules governing taxicab drivers exist for a reason; to protect the safety of the public and to ensure the performance of activities with integrity and honesty. Although there was evidence that the Applicant had not complied with the law in the past, he did acknowledge his wrongdoings, he appeared remorseful and promised to comply with the law. The TLT was also of the view that he has taken steps to reform himself, of having completed a drivers' training course and of proving to be a reliable employee.

We take the City's position to be that it cannot advocate that a licence be granted, thus leaving the decision entirely in the hands of the TLT.

Based on the passage of time, and the Applicant's increased maturity and the change in life circumstances in the more than six years since the date of the accident, the Applicant demonstrated remorse, the fact he has paid his debt to society through a prison term, and the principle of rehabilitation as expressed in the need for licencees to make a livelihood and the City's silence on whether the licence should be refused, the TLT ordered that a taxicab licence be issued to the Applicant subject to the following conditions:

- (1) Immediately upon issuance, the licence shall be placed on probation for a period of five (5) years;
- (2) During the probationary period, the Applicant, at his own expense shall provide an up-to-date record of his criminal charges and convictions and an updated abstract of his driving record on each renewal for the next five (5) renewals.
- (3) The Applicant shall notify MLS in writing within three (3) business days if the Applicant incurs any new charges or convictions under the *Toronto Municipal Code*, the *Highway Traffic Act* or the *Criminal Code*.
- (4) Such notice may be given in any of the following ways:

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- 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
- (5) The Applicant must provide to Municipal Licensing and Standards proof of payment of any outstanding fines;
- (6) During the probationary period, if MLS has concerns with any new charges or convictions or with any change in the Applicant's employment status, those matters and report 6261 and any updating material, shall be brought back before the TLT for a full hearing.]

(Hedy) Anna Walsh, Chair
Panel Members, Moira Calderwood and Ted Yao concurring

[Reference: Minute No. 4/15]

Date Signed: _____