

## REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

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**Date of**

**Hearing:** November 3, 2016

**Panel:** (Hedy) Anna Walsh, Chair; Aly N. Alibhai, Member

**Re:** Sulakshan Selvasingam  
Applicant for a Tow Truck Driver's Licence (Application No. B647733)

**Counsel for Municipal Licensing and Standards:** Ms. Brennagh Smith

### INTRODUCTION

1. The Applicant requested a hearing before the Toronto Licensing Tribunal (TLT) to determine whether or not a Tow Truck Driver's Licence should be issued, be denied, or have conditions imposed upon it.
2. The central issue was whether the Applicant's (Mr. Selvasingam) history of multiple *Highway Traffic Act* charges and convictions provide reasonable grounds to believe that his operation of a tow truck poses a risk for the public's safety.
3. After hearing the evidence submitted by the City and the Applicant, as well as the submissions of both parties, the Tribunal ordered that a Tow Truck Driver's Licence should not be issued to the Applicant for reasons as set out hereafter.

### CITY'S EVIDENCE

4. The City called one witness to testify on its behalf. Mr. Terry Van Elswyk, Supervisor, Municipal Licensing and Standards (MLS), testified on behalf of the City of Toronto after being sworn. He reported reviewing Report No. 6598.
5. Mr. Terry Van Elswyk referred to:
  - an updated Driver Records Search on October 18, 2016 from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON") related to Mr. Selvasingam's driving record, revealing two (2) new *Highway Traffic Act* convictions and two new *Highway Traffic Act* charges pending disposition in court in January and March, 2017 (page 85);
  - an application by Mr. Selvasingam, for a Tow Truck Driver Licence, dated March 29, 2016 (page 4);
  - a criminal background check by York Regional Police, dated March 23, 2016, submitted by Mr. Selvasingam (page 5);

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- an abstract from the Ontario Ministry of Transportation, dated March 23, 2016 revealing *Highway Traffic Act* charges and convictions against Mr. Selvasingam including a driving offence on August 25, 2014 of driving 85 km. in a 50 km. zone and a conviction in September, 2015 as well as an offence dated October 9, 2014, for failing to stop before entering an intersection and an offence of driving 75 km. in a 60 km. zone with a conviction on November 12, 2015 and a charge of speeding 146 km. in a 100 km. zone, dated October 3, 2014 (page 6);
  - a chart from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), dated October 18, 2016 of outstanding charges, convictions and court dates, including an October 3, 2014 charge of speeding 146 km. in a 100 km. zone and charge of speeding 105 km. in a 60 km zone while driving southbound on Warden Avenue and a court date on February 6, 2017 (page 86);
  - a chart setting out a speeding charge on October 3, 2014, with a conviction on July 8, 2016 for speeding 129 km. instead of 146 km. (page 95);
  - a ticket issued by officer Mark Ashley, dated January 3, 2016 at 1:18 AM for following too closely (page 27);
  - a second charge on January 3, 2016 at 2:00 AM for stunt driving north bound on the Don Valley Parkway (DVP) (page 29) and a guilty plea for driving 154 km. in a 90 km zone. Mr. Van Elswyk testified that during the investigation of these offences, Mr. Selvasingam was screaming and yelling at police, that his friend arrived at the scene and that he was instructed to stay in his vehicle (page 2) and that he was issued an administrative automatic driver's licence suspension until January 10, 2016 (page 6) with a court date of January 19, 2017; and
  - a driver's abstract, dated October 18, 2016, with a charge of speeding on July 8, 2016 and an administrative driver's licence suspension dated July 10, 2016 for racing or stunt driving, with a court date of March 29, 2017 and a charge of speeding 105 km. in 90 km. zone, dated February 1, 2016 and a conviction dated October 3, 2016 (page 97).
6. Mr. Selvasingam did not cross-examine Mr. Van Elswyk and his evidence was therefore unchallenged.

## **APPLICANT'S EVIDENCE**

7. The Applicant appeared on his own behalf, without legal representation, was duly sworn and testified to the contents of the report. The Applicant was advised of his right to have legal representation and indicated that he wanted to proceed without legal representation.
8. The Applicant testified that on January 3, 2016, he was stopped on the DVP and charged with speeding. He reported that the police officer thought that he was trying to "hide" and that he was assisted by a friend, who arrived shortly afterwards and

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that he asked the officers, "What are you going to do shoot me?" because "they were taking my car and yelling at me. "

9. The Applicant stated that on July 8, 2016, he wasn't speeding, that he was driving a manual or stick shift transmission vehicle for the first time and that his "wheels spun out". He reported that his worst offence is for speeding 30 km. over and that "everything else is minor, and I have no criminal charges."
10. On cross-examination, he admitted to having owned five cars in the past, with licence plates starting with "B", except for a vehicle with licence place, BTBZ 486, which he stated belonged to a friend (page 38). He said that he is currently only driving his mother's car which is registered in her name. He claimed to have been driving his friend's car when he was charged with speeding on the DVP in February, 2016. He asserted that he was driving 120 km. rather than 134 km. in a 90 km. zone and was driving his friend home because his friend was drunk and admitted to being convicted of driving 120 km.
11. He reported that he is 20 years old and received his driver's licence in 2012, at the age of 16, and was able to drive 8 months later, unaccompanied.
12. He claimed to have saved enough money to pay for his schooling and living expenses from work over the summer as a lube technician at a Mazda car dealership and by doing odd jobs over the year in an auto body shop, including driving a tow truck two or three times a week to take scrap cars to the scrap yard.
13. He said that he was offered a job by Mr. John Leezer to drive a tow truck and that he would drive on weekends and first thing in the mornings, as his classes start at 12:30 PM and that his boss would cover his shift in the afternoons. He reported that he was studying auto mechanics at Centennial College.
14. He claimed that on October 3, 2014, when charged and later convicted of failing to stop before passing an intersection, it was raining at the time.
15. He stated that on January 3, 2016, he was charged with following too closely, and was only issued a "warning ticket" and wasn't officially charged with an offence.
16. He reported that on February 1, 2016, he was only going 132 km. in a 90 km. zone on the DVP and that he was merely trying "to move through the intersection."
17. The Applicant did not call any witnesses to testify on his behalf.

## **CITY'S SUBMISSIONS**

18. In her closing submissions, counsel for MLS, submitted that the Tow Truck Driver's Licence for Mr. Selvasingam should not be issued as he had several *Highway Traffic Act* charges and convictions in the four years since having been issued a driver's licence, all of which pose serious concerns for MLS.

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19. There were seven (7) *Highway Traffic Act* charges, five (5) convictions, an administrative driver's licence suspension and two (2) charges pending in court in 2017. Mr. Selvasingam disputed that he was speeding and attributes his charges and convictions to weather conditions, or to the fact that he wasn't used to driving a manual or stick shift transmission car, or to improper measurements of his driving speed by the police, all of which go to his credibility.
20. Although the Applicant claims to have been offered a tow truck driver position, he was unsure of his employer's name, was unable to produce a job offer letter and did not appear to have any concrete plans in place in terms of his employment as a tow truck driver. He also claimed to have other means of support to finance his schooling and living expenses. Given the serious nature and volume of his charges and convictions under the *Highway Traffic Act*, there are reasonable grounds to believe that Mr. Selvasingam has not complied with the law in the past, and that he will not comply with the law in the future.

### **APPLICANT'S SUBMISSIONS**

21. The Applicant claimed to want to work full-time as a tow truck driver to make more income. He acknowledged his charges and convictions, with the exception of the second charge for stunt driving, and claimed that the City did not "have disclosure".

### **DECISION**

22. The Tribunal ordered that Mr. Selvasingam be denied a Tow Truck Driver's Licence.
23. The strong and convincing evidence presented at the hearing of Mr. Selvasingam's conduct and numerous serious *Highway Traffic Act* charges and convictions in the four years since obtaining his driver's licence provided reasonable grounds to believe that he has not carried on, or will not carry on, the operation of a tow truck with integrity and honesty, and that the issuance of a Tow Truck Driver's licence would constitute a danger to members of the public.
24. In addition to his history of multiple *Highway Traffic Act* charges and convictions, the Applicant displayed no remorse for his wrong doings and assigned blame to weather conditions, the use of a manual or stick shift transmission vehicle and improper measurements of his driving speed by the police.
25. The Tribunal also had regard for the Applicant's need to make a living. Chapter 545-3 B (3), subsection (c) of the *Toronto Municipal Code* requires that the Tribunal consider the need to balance the protection of the public interest with the need for licensees to make a living. The Applicant reported that he had other means of financial support through work in an auto body shop and the Tribunal believes therefore that he could thereby provide for himself and for his family.
26. The rules governing tow truck drivers exist for a reason: to protect the safety of the public and to ensure the performance of activities with integrity and honesty. Accordingly, considering all the evidence and the submissions of Counsel for the City

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of Toronto and the Applicant and based on the totality of all of the evidence as outlined above, the Tribunal decided that the application for a Tow Truck Driver's licence be denied, in order to protect the health and safety of the public, in accordance with Section 545-4C (1), subsections (a), (b) and (e) of the *Toronto Municipal Code*.

Originally Signed

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(Hedy) Anna Walsh, Chair  
Panel Member, Aly N. Alibhai concurring

*[Reference: Minute No. 182/16]*

**Date Signed: November 24, 2016**