

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: September 22, November 10 and November 22, 2016

Panel: Moira Calderwood, Panel Chair; Ali Alibhai, Members

Re: Kashif Nawaz
Applicant for Renewal of Taxicab Driver's Licence D01-4299951

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

Counsel for Mr. Nawaz: Mr. Tyrone Crawford

Note regarding constitution of the panel

Tribunal member Mr. Richard Quan sat as a panel member on this matter, on September 22, 2016. After that date, Mr. Quan was unable to complete the hearing or to participate in the decision-making process. At the start of the November 10, 2016 hearing day, the panel chair advised the parties that, as permitted under section 4.4 of the *Statutory Powers Procedures Act*, the remaining two members were willing to complete the hearing and give a decision. The Panel Chair alerted the parties to the risk of a deadlocked panel, if the hearing continued with two members. Both parties agreed to continue the hearing before the two-member panel.

The panel notes with deep regret that Mr. Quan has since passed away.

INTRODUCTION

On Saturday, January 17, 2015, some friends, including Ms. X, Ms. Y and Mr. Z went to a pub/restaurant in downtown Toronto. In the early hours of the next morning, they took a Beck taxi, driven by Mr. Nawaz, back to Ms. X's residence. Ms. Y then noticed she did not have her iPhone. The friends concluded that Mr. Nawaz had stolen the phone at some point during the taxi ride. Mr. Nawaz denies this. The police charged Mr. Nawaz with theft.

Municipal Licensing and Standards (MLS) learned of these events, and noted other charges Mr. Nawaz had incurred under the Highway Traffic Act (HTA) and the Toronto Municipal Code ("the By-law"). MLS required Mr. Nawaz to attend before the Toronto Licensing Tribunal to determine whether his Taxicab Driver's Licence should be suspended, revoked, or have conditions imposed on it.

Issue

Does the Tribunal have reasonable grounds to believe that Mr. Nawaz's conduct is such that his Taxicab Driver's Licence ought to be revoked?

Testimony of PC Keith Tauro

Constable Tauro testified on behalf of MLS.

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Through documentation, plus his testimony and cross-examination, Constable Tauro told the Tribunal:

He was dispatched on January 18, 2015, to investigate an alleged theft of a cell phone. He and his partner, Constable Seaforth, attended and initially spoke to three people: Ms. Y (the owner of the missing iPhone), Ms. X and Mr. Z. Constable Seaforth took Ms. Y's statement.

He ascertained that Ms. X had been using the cellphone application ("app") "Snapchat" to record and share aspects of the outing. He saw and seized a Snapchat video that Ms X had made. Ms. X subsequently uploaded the video to YouTube. At the September 22, 2016 hearing date, Mr. Gourlay accessed the copy of the Snapchat video that Ms. X uploaded to YouTube and showed it on a screen in the hearing room. The Tribunal viewed the video again on the November 22 hearing date.

Constable Tauro described the investigative steps he took in this matter. He stated that Mr. Nawaz attended the police station on the afternoon of January 18, and that he interviewed him. Mr. Nawaz gave him an iPhone that he was able to identify, via its serial number, as Ms. Y's.

At the end of his interview with Mr. Nawaz, he cautioned Mr. Nawaz and advised him of his right to counsel. He had a further conversation with Mr. Nawaz. He charged Mr. Nawaz with theft under \$5,000 (section 334 of the *Criminal Code*).

Although he was not involved with the court hearing, Constable Tauro advised that the charge against Mr. Nawaz was withdrawn, because the court system lost the original copy of the Form 9 (an Appearance Notice). According to Constable Tauro, a trial cannot proceed in the absence of the original of that document.

Constable Tauro testified and was cross-examined about whether he had his mind set, right from the start of his investigation, that this was a case of theft. He asserted that he considered whether this was a case of lost and found, and that the fact that the police dispatcher characterized the call as "theft" did not influence him into deciding that this was a case of theft.

Testimony of Ms. Kuztelska

Ms. Kuztelska is the Supervisor, Bylaw Enforcement, with MLS. Through this witness, the City submitted into evidence Report No. 6367 (pages 1-81) which was marked as Exhibit 1, without objection by Mr. Nawaz. Ms. Kuztelska's staff prepared the original report (pages 1- 24, dated October 20, 2015) and the update dated February 1, 2016 (pages 25-35) and these bear her signature. The updates dated June 3, 2016 (pages 36-53) and September 9, 2016 (pages 54-69) were prepared under Acting Supervisor, Bylaw Enforcement Mr. Gil Manzano, and bear his signature. The most recent update, dated October 24, 2016 (pages 70-81) was prepared under Ms. Kuztelska, and bears her signature.

The report contains documentation respecting Mr. Nawaz's criminal charge of theft, as well as information about his charges and convictions under the HTA and the By-law.

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Ms Kuzstelska was asked, in cross-examination, what the By-law says with respect to the time frame for a cab driver to return property lost or left in a cab. Ms. Kuzstelska said she believes the cab driver is obliged to do so, forthwith.

City Counsel subsequently handed the Tribunal a copy of §545-147.2 of the By-law (which was in effect at the relevant time), which provides, in section M:

Every driver shall, immediately upon the termination of any hiring or engagement, carefully search his or her taxicab for any property lost or left therein, and all property...left in his or her taxicab shall be forthwith delivered over to the owner of the property or money, or if the owner cannot at once be found, then to the nearest police station.

Counsel for the City further provided a copy of the successor section, §546-95, C, which requires a driver to “promptly” deliver lost or left property to its owner or to the nearest police station.

Testimony of Mr. Nawaz

During the course of his direct testimony and Mr. Gourlay’s cross-examination, Mr. Nawaz provided further information with respect to the events of January 18, 2015, and his driving and By-law conviction history.

Direct testimony

Mr. Nawaz has been married for over 20 years, has four children, and is the family’s sole financial support.

Mr. Nawaz described the events of the early morning hours of January 18, 2015. He recalled picking up four passengers, two men and two women, around 2:45 a.m., including Ms. X and Ms. Y. He described the group’s behaviour in the taxicab as “reckless” as they were playing with the microphone and taking his scarf. He assumed that they were “super drunk.”

Mr. Nawaz stated that he usually put his white Samsung cell phone by his side. He acknowledged that the Snapchat video shows him moving a cell phone (which we now know was Ms. Y’s iPhone) towards his right leg, in the driver’s seat of the taxi. He stated that he thought it was his Samsung cell phone. Mr. Nawaz acknowledged that it is him in the video, that his hand reached for the phone, and that he now knows the phone was not his.

Mr. Nawaz said that after he dropped that group, a passenger flagged him to drive to Brampton. He took Spadina to the Gardiner Expressway, to Highway 427, to Highway 401 westbound, to 410 westbound and exited at Sandalwood Parkway. It was snowing and -10 degrees, and the drive took about an hour. At some point during that drive, the cell phone beside him began to ring, and he realized it was not his cell phone.

After he dropped the customer in Brampton, he realized he had a flat tire and stopped at a gas station to change it. This took approximately 1-1/2 hours.

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When the tire was fixed, he took Highway 401 home. When he reached home around 5:50 a.m., he charged both the iPhone and his own cell phone, both of which had run down. When his cell phone was charged, he received three messages asking him to call about the missing iPhone. He called the number but no-one answered. Mr. Nawaz's Fido cell phone bill for the relevant time period was entered as Exhibit 3. It shows three calls to Ms. X's number at 6:25, 6:27 and 6:31 a.m. He left a voice mail. The Tribunal listened to a recording of that voice mail message during the course of the hearing.

Mr. Nawaz stated, and the cell phone bill shows, that he then called in to Beck Taxi, at 6:33 a.m. He recalled that the Beck supervisor told him not to worry about the iPhone and asserted that Beck Taxi had not contacted him, by phone or by radio, before then.

He slept for some hours. Around noon, the police called and he attended 55 Division. He told the police officer (Constable Tauro) that he had tried to call the taxi passengers. The police officer gave the phone back to the lady who owned it.

The police charged him with theft. He went to court in March 2015. His counsel explained that the phone was not worth more than \$200 and that he had returned the phone. The judge said the charge was withdrawn.

Cross-examination

Mr. Nawaz acknowledged that the phone in the video was in a pink case. When he gave the iPhone to Constable Tauro, it no longer had a pink case. He does not know what happened to the pink case. Maybe when he was changing the tire, he lost the pink case. He does not know why he did not notice or feel the pink case at the time when he pulled the iPhone towards him on the front seat of the cab, thinking it was his phone.

Mr. Nawaz' cell phone bill shows (line 148) an incoming call at 3:05 a.m. that lasted for two minutes. This was during the time he was driving the passenger to Brampton. He does not use his cell phone when he is driving, and did not answer this call.

Mr. Nawaz' cell phone bill shows (lines 149, 150, 151) three outgoing calls made at 3:15, 3:18 and 3:19 a.m., respectively, again, during the time he was driving the passenger to Brampton. Mr. Nawaz initially had no explanation for how these calls were made, repeating that he does not use his cell phone while driving. When pressed, he said that maybe the passenger he was driving to Brampton had used his (Mr. Nawaz's) cell phone.

Under cross-examination, Mr. Nawaz recalled that the passenger who went to Brampton had to go to a bank machine for money to pay the taxi fare, which added to the time spent with that customer.

When the iPhone rang while he was driving to Brampton, Mr. Nawaz realized it was not his phone. He checked and his phone was in the console box.

When asked about the voice mail he left for Ms. X, which said that he had found a cell phone under the front seat of the cab (rather than beside him on the seat), Mr. Nawaz said that when he left the voice mail, he was tired, he had been driving for 13 hours. He was not sure if the iPhone had been under the seat.

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With respect to his driving record, Mr. Nawaz initially stated he had “no violations.” When his attention was drawn to certain HTA convictions listed in Exhibit 1, Mr. Nawaz stated he had “no demerit points.” He said the judge reduced his HTA charges to “minor violations.” He acknowledged that some HTA offences took place in a taxi.

With respect to By-law violations, Mr. Nawaz initially stated, “Until today, I have no convictions.” When taken through information in Exhibit 1 showing his By-law convictions, Mr. Nawaz stated that he got tickets, paid the fines and did not go to court. With respect to two convictions for the same date, respecting unauthorized parking of a taxi waiting for hire, Mr. Nawaz stated that the officer came towards him from the front (not the back, as Mr. Nawaz thinks he should have) and gave him a ticket. Then the officer returned later and gave him a second ticket. When his attention was drawn to the chart at page 54 of Exhibit 1, setting out further By-law offences, Mr. Nawaz said that some of the information was repeated (which, according to the dates and individual summons numbers, was not the case). When his attention was drawn to the chart at page 70 of Exhibit 1, setting out further HTA and By-law offences, Mr. Nawaz reiterated that the “bottom line is that until today I have no convictions.”

SUBMISSIONS

Mr. Gourlay for the City

Mr. Gourlay stated that the Tribunal should revoke Mr. Nawaz’s taxi driver’s licence. Mr. Nawaz admitted most of the elements of offence of theft (but not all, not intent).

Mr. Gourlay pointed to various ways in which Mr. Nawaz’s credibility was suspect.

Mr. Gourlay stated that Mr. Nawaz’s testimony that Ms. X, Ms. Y and Mr. Z were intoxicated should increase the Tribunal’s concern, because it is a role of the taxi industry to deliver intoxicated persons safely to their destinations, and taxis should be a “safe haven” for people whose judgment may be impaired.

Mr. Gourlay pointed out that the video is really the only evidence about what happened, as Ms. X, Ms. Y and Mr. Z did not know that the iPhone had been taken at the time the event occurred, but only later, when they viewed the Snapchat video. Mr. Gourlay asserted that the City decided not to call these persons as witnesses as they actually had not witnessed the alleged theft.

Mr. Gourlay stated it was significant that (as evidenced by his cell phone bill) Mr. Nawaz called Ms. X (at 6:40 a.m.) directly after he spoke to Beck Taxi (at 6:33 a.m.). Mr. Gourlay found it unlikely that, as Mr. Nawaz testified, Beck Taxi had told him “not to worry about” the cell phone. In Mr. Gourlay’s view, there are reasonable grounds for concern that a theft occurred, and concern is compounded by the fact that the cell phone belonged to a taxi customer.

Mr. Gourlay pointed out that, given his position that this was not a theft, Mr. Nawaz did not take any opportunity to express remorse or take responsibility for his conduct.

Mr. Gourlay stated that, as Mr. Nawaz has a Class F driver’s licence and no criminal record, if his taxi driver licence were revoked, he would have other opportunities to work as a professional driver.

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With respect to a taxi driver's obligation to return property which is lost or left in a cab, Mr. Gourlay pointed out that the relevant provision of the By-law states that the taxi driver is to "forthwith" return such property. Yet, Mr. Nawaz delayed for some 3-1/2 hours between the time he heard the iPhone ringing and realized it was not his Samsung, and the time he called Beck Taxi at 6:33 a.m.

Mr. Gourlay reviewed Mr. Nawaz's driving record, and stated that on the totality of all the offences, coupled with the cell phone incident, the Tribunal should revoke Mr. Nawaz's taxi driver licence.

Mr. Crawford for Mr. Nawaz

The Tribunal did not allow Mr. Crawford to pursue questioning of Mr. Nawaz about what he was wearing when he picked up Ms. X, Ms. Y and Mr. Z. This was unfair.

Mr. Crawford submitted that Mr. Nawaz's driving record shows no charges or convictions for dangerous, careless or impaired driving, and there is no evidence of accidents or of injury to person or property. He said Mr. Nawaz's driving record is "standard" for taxi drivers in the City and that Mr. Nawaz is a "fairly decent" Toronto taxi driver. Mr. Crawford stated that there is no evidence of customer complaints about Mr. Nawaz or of any concerns expressed by taxi companies he has worked for.

With respect to the cell phone incident, Mr. Crawford submitted that Mr. Nawaz has attended proceedings related to this six or seven times, has retained a lawyer, has affirmed that he will tell the truth, and has given respectful and responsible answers respecting this incident. He said that Mr. Nawaz did not evade questions, but presented the story in his own way, keeping in mind his level of English proficiency and his tendency towards redundancy. Mr. Crawford stated that Mr. Nawaz's testimony was not rehearsed.

Mr. Crawford pointed out that the cell phone incident is the first serious concern MLS has had about Mr. Nawaz. He stated there are two versions of what happened. In MLS's version, Mr. Nawaz is a thief. In Mr. Nawaz's version, Ms. Y negligently, carelessly, forgetfully or mistakenly left her iPhone on the taxi seat. Without the presence of Ms. X, Ms. Y or Mr. Z at the Tribunal hearing, they did not have an opportunity to establish whether Ms. Y was generally careless with her cell phone, or has a forgetful nature.

Mr. Crawford stated that the Snapchat video shows only a ten-second moment out of the encounter. He said it is relevant how much liquor Mr. Z, Ms. Y and Ms. X had consumed. But as they are not present, we cannot establish these facts. He said that, without these witnesses, the Tribunal cannot decide whether Mr. Nawaz stole the iPhone. He asserted that the Tribunal would need certainty to declare Mr. Nawaz a thief and that in law, if a trier of fact believes both competing theories, they must acquit. Mr. Crawford referred to (although did not provide a copy of) the 1991 Supreme Court of Canada (SCC) case *R. v. W (D)*, respecting burden of proof. He stated that the Tribunal cannot read into Mr. Nawaz's brain his intention.

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Mr. Crawford submitted that there is no direct evidence in this case regarding the cell phone matter that all the evidence is circumstantial and is based on hearsay. The police officer's testimony was based on hearsay.

Mr. Crawford stated that to revoke Mr. Nawaz's Taxicab Driver's licence, the Tribunal would have to "decide if my client is a thief." He said that it never entered Constable Tauro's mind that this was a possible case of lost and found, rather than theft. Every step the police took was based on their impression that this was a theft. They did not consider any alternative theory of the case.

Mr. Crawford said that at the criminal trial, Constable Tauro could have provided the court with a copy of the lost Form 9. The court decided there was no evidence to convict Mr. Nawaz. Further, the decision-maker would consider the value of the allegedly stolen goods, which in this case (according to Mr. Crawford) was approximately \$20.

Mr. Crawford stated that Mr. Nawaz made attempts to contact the iPhone's owner, then returned the iPhone within 12 hours, which constitutes acting "forthwith." He pointed out that Ms. Kuszelska could not provide a definition of "forthwith" adding that if she could not do so, how could the Panel define it?

Mr. Crawford asserted that one of the female passengers was pulling on Mr. Nawaz's scarf, and pointed out that she was at a bar at 2:30 in the morning. He stated that Mr. Nawaz's smiling on the video was not because he was a thief, but was due to his being happy about "sexy overtures" from the customer. Mr. Crawford believes that the reason Ms. Y reported her cell phone as stolen was to shift the blame for her own carelessness on to someone else.

Mr. Crawford stated that this matter comes down to how the cell phone got onto the seat, which, he asserts, was through the owner's mistake. He commented that he personally has lost his cell phone in the car 500 times.

Mr. Crawford stated that to revoke Mr. Nawaz's Taxicab Driver's licence would be a major step which would destroy his family.

Mr. Gourlay – Reply

The Tribunal's stopping Mr. Crawford from asking Mr. Nawaz about what he was wearing (a scarf) had no bearing on fairness.

Mr. Crawford is mistaken in saying that Constable Tauro considered only a theft theory. Rather, Constable Tauro testified that the police considered all possibilities.

Mr. Crawford appeared to give evidence during his submissions about the criminal proceedings; specifically, when he suggested that Constable Tauro lost the original Form 9. This was not elicited from Constable Tauro during his evidence. Constable Tauro's evidence was that the charge was withdrawn.

Mr. Crawford's submissions regarding "sexy overtures" and Mr. Nawaz's possible reaction to those were not based on anything that was submitted in evidence.

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When Ms. Kuzstelska was asked what the By-law says about return of lost property, she said, “I think the By-law says ‘forthwith’.”

The SCC case of *R. v. W (D)* is specific to the criminal context, which has a different burden of proof from that applicable to Tribunal proceedings. A more appropriate case with respect to burden of proof would be *Faryna v. Chorny* (again, no copy was provided).

Mr. Crawford’s suggestion that the City’s case was incomplete because Ms. Y was not present is unfounded. Mr. Nawaz could have called Ms. X, Ms. Y or Mr. Z as witnesses if he chose.

Mr. Crawford’s submissions as to Ms. Y’s being at “fault” or shifting “blame” are irrelevant. The fact is, she left the iPhone on the seat of the cab.

Mr. Crawford – Reply

Mr. Gourlay stated that most of the elements of theft were admitted, but not all.

With respect to “sexy overtures,” Mr. Nawaz stated in testimony that Ms. Y gave him a hug. This equates to “sexy overtures.”

R. v. W (D) is a criminal case, but the Tribunal has to decide if Mr. Nawaz engaged in criminal behaviour; how can it do so without applying criminal principles? The City has not proven Mr. Nawaz’s intent.

The Tribunal must consider the impact that revocation of the licence would have on Mr. Nawaz’s life. We do not know that Mr. Nawaz is a thief.

The City argued that it did not need to call witnesses (Ms. X, Ms. Y and Mr. Z) to prove its case. The hearing proceeded on “weightless evidence.” It is not up to Mr. Nawaz to bring a motion to call witnesses, and he does not have the resources to do so.

Mr. Nawaz is not a thief. He made efforts to return the iPhone to its owner, and ultimately did so.

Analysis and decision

The Tribunal decided to renew Mr. Nawaz’s taxi driver 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.

Section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1980, c. S22, provides that “a tribunal may admit as evidence at a hearing, whether or not ... admissible as evidence in a court... any oral testimony, document or other thing relevant to the subject-matter of the proceeding, and may act on such evidence.” For this reason, we were confident that

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we could consider and rely on any of the evidence in this hearing, which may have been in the nature of hearsay, considering its relevance and reliability and applying the appropriate weight.

Protection of the public interest

It is important to state that the Tribunal's task was not to decide whether or not Mr. Nawaz was (in Mr. Crawford's words) "a thief." Rather, the Tribunal's task was to weigh whether or not, on all the evidence before us, we have reasonable grounds to believe that Mr. Nawaz's conduct justifies revocation of his taxi driver's licence.

The theft charge related to the January 2015 cell phone incident was withdrawn. While we agree with Mr. Gourlay's submission that Mr. Nawaz acknowledged, during the Tribunal hearing, the elements of the offence of theft except intention, we did not find that intention was established in the hearing before us.

Further, even if Mr. Nawaz had engaged in criminal conduct such as cell phone theft in 2015 (and we are not making a finding that he did), such conduct would have happened approximately two years ago. There is no information before the Tribunal suggesting that Mr. Nawaz has engaged in criminal activity, either before or after this incident. Even if there had been evidence of a conviction of theft of a customer's iPhone (which, we repeat, there is not), we would have had to consider that one isolated property offence in the context of an otherwise unblemished criminal record.

Theft from a customer by a driver on duty in a cab would be extremely serious (if proven), but we did not see information to suggest any pattern of conduct issues on the part of Mr. Nawaz. At most, the evidence (including the video evidence) could suggest that Mr. Nawaz showed a troubling, but isolated, lapse of judgment on January 18, 2015, in moving a customer's cell phone, close to his body in the front seat of the taxi.

Taken in its entirety, the information before the Tribunal was not enough to persuade us that Mr. Nawaz poses a danger to the public interest due to criminal activity.

The Tribunal also considered Mr. Nawaz's driving record and By-law convictions. HTA offences include convictions for an October 2013 improper use of signals in a taxi, an October 2015 speeding offence in a taxi, a November 2015 improper stop, and a charge (yet to be heard) for a 2016 unsafe turn/lane change in a taxi. By-law offences include convictions for a January 2016 offence of no taxi operator log, and January and April 2016 offences of unauthorized location of a taxi cab waiting for hire. This is not an unblemished HTA or By-law record, but, on the other hand, neither is it a record on the most concerning end of the spectrum.

While we disagree with Mr. Crawford that it is "standard" for a Toronto taxi driver to have both By-law and HTA convictions, we do not conclude that Mr. Nawaz's record of HTA and By-law convictions is so serious as to endanger the public interest to the extent that his Taxicab Driver's licence should be revoked. We are satisfied that our concerns arising from the fact of these convictions can be addressed by means of probation with conditions, and that these convictions do not ground a need for revocation.

Need for the licensee to make a livelihood

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 to the contrary of Mr. Nawaz's statement that he provides the sole financial support for his family; Mr. Gourlay fairly acknowledged Mr. Nawaz's financial situation, in his submissions. Other than the bald fact that Mr. Nawaz's provincial driving abstract shows he has a Class F licence, there was no information before the Tribunal with respect to his prospects of finding work using that qualification, and we concluded that revocation of his Taxicab Driver's licence would have a very negative impact on Mr. Nawaz's (and his family's) financial circumstances.

Honesty and integrity

The Tribunal also put its mind to the concerns which MLS expressed about Mr. Nawaz's honesty and integrity, as set out in the By-law, § 545-4, subsections (1) (a), (b), (c) and (e).

The Tribunal had trouble accepting some of Mr. Nawaz's evidence at face value. For example:

- Mr. Nawaz's narrative of the events of the early morning hours of January 18, 2015 was troubling. We noted that further explanatory details (buttressing Mr. Nawaz's version of the time-line) emerged for the first time under cross-examination; for example, Mr. Nawaz recalled that the customer who succeeded Ms. X's party in his cab had to go to a bank machine, which added to the time he spent with that fare.
- Mr. Nawaz's explanation of the three outgoing calls on his cell-phone bill supposedly made during that long trip to Brampton – that perhaps the passenger had used his (Mr. Nawaz's) cell phone – strained credulity, particularly when considered against his evidence that his own cell phone was in the console box during that trip, as he was under the mistaken impression that the iPhone resting beside him on the seat was his phone.
- As noted above, Mr. Nawaz could explain neither why he did not feel the pink iPhone case when he first moved that phone towards him on the front seat of the cab, nor what happened to the pink iPhone case other than that it might have somehow got lost while he was changing the taxi's flat tire.
- We also noted information from the report and Constable Tauro's evidence showing that Mr. Nawaz's Samsung cellphone and Ms. Y's iPhone were different sizes and looked quite different, with different lock-screen images, and so on. Mr. Nawaz had no explanation how, despite these differences, he mistook one phone for the other.
- There was a discrepancy in Mr. Nawaz's evidence that the iPhone was on the front seat of the cab, beside him (and he was alerted to its presence when it rang while he was on the Brampton trip) compared to his statement in the voice-mail he left for Ms. X that he had found the iPhone under the seat of the cab. Mr. Nawaz had no real explanation for this discrepancy, other than to suggest he was "tired" when he left the voice-mail.

It was difficult to determine, when he asserted he had "no violations" of driving laws or the By-law, whether Mr. Nawaz was attempting to mislead the Tribunal, or was under the

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mistaken impression that once a fine is paid, the matter is over and done with. Paying a fine does not, of course, mean that the conduct did not occur. Mr. Nawaz tried to minimize the By-law offences and suggested that some were laid improperly, for example, because an officer approached his cab from the wrong direction, or the officer was vindictive. He disputed the existence of some charges (asserting they were duplicates) when the documentary evidence clearly showed that several charges (with different summons/case numbers) were laid.

Mr. Nawaz did not leave the Tribunal with the impression that he was forthright in acknowledging past driving or By-law lapses, or that he was determined to do better in future.

Further, the nature of the By-law offences (failing to have a taxi operator log, or having the cab in an unauthorized location while waiting for hire) raised issues about Mr. Nawaz's honesty or integrity in carrying out his business.

In sum, Mr. Nawaz's demeanour, aspects of his testimony, and portions of his record, raised concerns for the Tribunal about his honesty and integrity. Although we did not decide that Mr. Nawaz's conduct was so concerning as to pose a threat to the public interest, we did have serious reservations about his honesty and integrity, including his honesty before the Tribunal, and we are of the view that the public interest will best be protected by imposing a period of suspension, followed by probation with conditions, on Mr. Nawaz.

DECISION

The Tribunal ordered that Mr. Nawaz's Taxicab Driver's licence will be renewed, effective immediately, subject to the following conditions:

- (1) Mr. Nawaz's licence shall be immediately suspended for a period of five (5) days, to commence on November 22, 2016; and the licensee must surrender his taxicab driver's licence and photo card on that date;
- (2) Prior to the renewal of the licence, Mr. Nawaz must provide to Municipal Licensing and Standards proof of payment of any outstanding fines;
- (3) Immediately upon being renewed, the licence will be placed on probation for a period of three (3) years to commence on November 22, 2016;
- (4) Prior to each of the next three (3) renewals of the licence, Mr. Nawaz must provide to Municipal Licensing and Standards, at his own expense, original updated abstract of both his criminal record and his driving record;
- (5) During the probationary period, if Mr. Nawaz incurs any new charges and/or convictions under the *Toronto Municipal Code* (the By-law), the *Highway Traffic Act* or the *Criminal Code*, he must notify Municipal Licensing and Standards, in writing, within three (3) business days. The notification shall include his Municipal Licensing & Standards licence number and the ticket number(s). Mr. Nawaz can notify Municipal Licensing and Standards in one of the following ways:

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- a. in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
- b. via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
- c. via email to mlsconditionreporting@toronto.ca; or
- d. via fax at 416-392-3102.

(6) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and report No. 6367, and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

Moira Calderwood, Panel Chair
Panel Member, Aly N. Alibhai concurring

[Reference: Minute No. 190 /16]

Date Signed: February 23, 2017