

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

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**Date of Hearing:** February 23 2017

**Panel:** Moira Calderwood, Chair; Melina Laverty and Daphne Simon, Members

**Re:** Seyed Yaghoob Mohseni Mofidi  
Holder of Taxicab Driver's Licence No. D01-3117254

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

**Counsel for Applicant:** Ms. Shirley Mofidi, Mr. Mohseni Mofidi's daughter

### **INTRODUCTION**

Mr. Mohseni Mofidi holds a taxi driver's licence issued by Municipal Licensing and Standards ("MLS") of the City of Toronto. In August 2015, MLS informed Mr. Mohseni Mofidi that his licence would be subject of review by the Tribunal. MLS was of the view that Mr. Mohseni Mofidi's conduct provided reasonable grounds to subject his licence to a hearing.

The Tribunal held the hearing on February 23, 2017, with the assistance of a Farsi-English interpreter. This is where you input the 'written decision' paragraph.

### **Issue**

Does Mr. Mohseni Mofidi's criminal and driving record provide reasonable grounds for the Tribunal to revoke, suspend, or place conditions upon Mr. Mohseni Mofidi's taxi driver's licence?

### **Testimony of Ms Kuztelska**

Ms Kuztelska is the Supervisor, Municipal Licensing and Standards. Through this witness, the City submitted into evidence Report No. 6485 (pages 1 – 220) dated January 18, 2016, with an update (pages 221 – 232) dated July 7, 2016, and a further update (pages 234 – 248) dated February 14, 2017. These documents were prepared by Ms Kuztelska, her colleague Mr. Van Elswyk, and staff. The entire report was entered as Exhibit 1.

Exhibit 1 contains documentation respecting Mr. Mohseni Mofidi's charges and convictions under the Criminal Code, the Highway Traffic Act ("HTA") and the Toronto Municipal Code, chapter 545 ("the By-law").

Exhibit 2 was a 10-page package of Integrated Court Offenses Network (ICON) and MLS documents related to Mr. Mohseni Mofidi.

February 23, 2017

Exhibit 3 was four pages of information respecting a further charge (proceed contrary to sign at intersection) laid against Mr. Mohseni Mofidi on February 18, 2017.

### **Criminal charges and conviction**

Mr. Mohseni Mofidi's criminal record includes two charges arising from only one incident. On July 6, 2015, Mr. Mohseni Mofidi was charged with assault with a weapon and dangerous operation of a motor vehicle. Mr. Mohseni Mofidi eventually pleaded guilty to assault with a weapon, and received a conditional discharge. He was restricted from operating a motor vehicle for four months. The Crown withdrew the charge of dangerous operation of a motor vehicle.

The police report relates that Mr. Mohseni Mofidi was driving a taxi northbound on Yonge Street and "cut off" a cyclist. The cyclist banged on the taxi window. The taxi accelerated and drove at the cyclist. The taxi hit the cyclist, who ended up on the ground, with his bicycle caught under the taxi. The cyclist was not injured but the bicycle's rear wheel frame was bent.

### **Testimony of Mr. Mohseni Mofidi**

With respect to the incident with the cyclist, Mr. Mohseni Mofidi stated that he was driving home in his cab. Suddenly, a cyclist was hitting his fist on the cab's window. The cyclist said, "You cut me." He asked the cyclist, "What do you want?" They both used vulgar language. The cyclist went in front of the cab and fell on the ground. He went out and asked the cyclist what happened. The cyclist said, "Nothing, really. Let's wait for the police." There were witnesses. When the police arrived, they asked the witnesses questions, and asked the cyclist questions, but did not ask him (Mr. Mohseni Mofidi) any questions. The police took him to the station and gave him a paper saying he was a dangerous driver and had used a weapon for assault, which he had not. He asked the police, if he was a dangerous driver, why were they letting him drive? The police said to go to court.

He hired a lawyer and went to court. He was told that he has no criminal record. He was ordered to take a road rage course, which he did. He had six months' probation, which he finished with no problem. He was banned from driving for four months, then was free to drive. This is the whole story. He was not guilty on the charge at all.

Exhibit 4 was a certificate from the Salvation Army, dated July 23, 2016, indicating that Mr. Mohseni Mofidi had successfully completed a 7-hour Road Rage Program.

Under cross-examination, Mr. Mohseni Mofidi maintained his version of events, and provided a few further details. He recalled that the cyclist had spit on his car. He reiterated that he didn't do anything but that the cyclist fell down in front of the car. He explained that the cyclist "contacted my car; that's why he fell down; I didn't hit him." He recalled that both of them were moving, but very slowly.

When Ms Smith asked if he was aware that he must give a cyclist one metre of space, Mr. Mohseni Mofidi stated that he was aware of that, but the cyclist kept confronting him. When Ms Smith questioned him as to why he did not just change lanes or turn around,

February 23, 2017

Mr. Mohseni Mofidi replied that the incident happened 20 metres from where he had to turn right to go home anyway, so he stayed in the right lane (Lane #2).

When Ms Smith pointed out that witnesses said he drove at the cyclist and struck him with the car, Mr. Mohseni Mofidi responded that it was not like that; rather, that the cyclist came towards him. Mr. Mohseni Mofidi suggested the witnesses may have known the cyclist.

### **Driving record**

Mr. Mohseni Mofidi's driving record as set out in Exhibit 1 contains HTA charges and convictions dating back to 2008, including speeding, driving while using a hand-held device, improper stops, failing to proceed at a green light, etc. The most recent provincial driver's licence abstract, dated July 7, 2016, showed convictions between 2013 and 2016 for failing to have an insurance card, to obey lane lights, or to stop at a stop sign, plus convictions related to driving while holding a hand-held device, and disobeying a legal sign. As already noted, Exhibit 3 indicates that Mr. Mohseni Mofidi incurred a charge (as yet untried) just five days before the Tribunal hearing, for proceeding contrary to a sign at an intersection.

In September 2012 and again in January 2014, the Tribunal placed conditions on Mr. Mohseni Mofidi's taxi driver's licence, including a condition that he report charges and convictions to MLS.

Ms Smith asked Mr. Mohseni Mofidi, under cross-examination, about his failure to report certain charges to MLS. He stated that charges were reported, but acknowledged that some convictions were not reported. He said this was due to a misunderstanding. He gave the responsibility to someone, who failed to report the conviction. More recently, he has been very careful regarding reporting. For example, he reported the dangerous driving charge.

Under re-examination, Ms Mohseni Mofidi established that Mr. Mohseni Mofidi retained an agent to represent him in court on some of the charges. He did not hear from the agent for over a month respecting what had happened in court. This is one of the reasons he did not report that conviction earlier. Now he takes care of the reporting to MLS himself.

### **Personal circumstances**

Mr. Mohseni Mofidi's wife has a chronic medical condition, and does not work. They have a son who lives at home and is in university.

During the four months when he was banned from driving, Mr. Mohseni Mofidi rented out rooms in the family home for income.

When driving a taxi, he works 10 - 12 hours per day, 5 or 6 days per week. The cab's owner is "Sultan." It is a Diamond cab. Sultan is not aware of the incident with the cyclist. He did not explain to Sultan why he could not drive for four months, and just told him he was going on a trip.

February 23, 2017

This is his only source of employment income. He does not own a cab. He rents a cab.

Mr. Mohseni Mofidi also collects some monthly retirement income. He has had to rely on credit cards to get by when he was unable to drive the taxi.

This is where the City's evidence will be inputted if there is any.

## **SUBMISSIONS**

Ms Smith for the City

Ms Smith stated that the City was not seeking revocation of Mr. Mohseni Mofidi's taxi driver's licence. Rather, she recommended that the Tribunal consider granting Mr. Mohseni Mofidi a taxi driver's licence, on probation, with conditions, and that it impose a 14-day period of suspension on the licence. The recommendation for 14 days of suspension was made bearing in mind that Mr. Mohseni Mofidi already lost four months of taxi income, during the time he was restricted from driving any automobile.

Ms Smith stated that Mr. Mohseni Mofidi did not appear to accept responsibility for the incident with the cyclist. She said it defied belief that he had no role in the cyclist's ending up on the ground with the bicycle under the cab.

Ms Smith pointed out that the criminal charges arising from the July 2015 incident involving the cyclist are the only criminal charges Mr. Mohseni Mofidi has incurred during his long career as a City licensee. In her view, this is a mitigating factor.

Ms Smith stated that the fact of the guilty plea with a conditional discharge was a further mitigating factor, and that the City is cognizant that Mr. Mohseni Mofidi has no criminal record.

Ms Smith expressed some concerns about Mr. Mohseni Mofidi's governability, in that his record of reporting charges and convictions to MLS was not perfect. She stated, however, that there has been an improvement in more recent years. She commented that while he explained that some of the breach was due to the inaction of a third party, he nevertheless is ultimately responsible for complying with the reporting requirement.

With respect to Mr. Mohseni Mofidi's driving record, Ms Smith said it would be appropriate to consider Mr. Mohseni Mofidi's overall record, noting that he was first licensed by the City in 1988, as a refreshment vehicle driver, and has held a cab driver's licence since 2001. While his record shows a number of minor HTA or By-law infractions, this must be considered over the almost 30 year period he has been a City licensee.

Ms Smith expressed concern over the fact that Mr. Mohseni Mofidi has incurred 11 new charges since January 2014, including an extremely recent charge, although she conceded that only four of these have, to date, resulted in convictions. She submitted that the record of driving and other offences provides grounds for a punitive measure in the form of a suspension.

Ms Mofidi for Mr. Mohseni Mofidi

February 23, 2017

Ms Mofidi agreed with Ms Smith that it would be appropriate to issue Mr. Mohseni Mofidi's taxi driver's licence with probation and conditions. She submitted that the 14 day suspension was too long as it would impose financial hardship on the family and that Mr. Mohseni Mofidi's wife and son are dependent on his income. Mr. Mohseni Mofidi tried to avoid the conflict with the cyclist and realizes the mistake he made.

### **Analysis and decision**

The Tribunal decided to issue Mr. Mohseni Mofidi a taxi driver's licence, 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

This was a difficult case. We discussed it at length and considered revoking Mr. Mohseni Mofidi's taxi driver's licence. We deliberated over whether the public would be adequately protected by a conditional licence in this case. We very narrowly decided that it is. Even though Mr. Mohseni Mofidi received a conditional discharge and does not have a criminal record, his conduct on that July day in 2015 gave us great pause.

While the July 2015 incident with the cyclist was concerning and resulted in a conviction of assault with a weapon, the Tribunal noted this was an isolated incident, and the cyclist was not injured. There have been consequences as a result; Mr. Mohseni Mofidi has now completed a course about road rage, was not allowed to drive for four months, and completed six months' probation. While very troubling, we noted that this was the only incident of this type in his record, and that such behaviour has not recurred in the year and a half since July 2015, nor has he had any past incidents of a similar nature.

The Tribunal considered Mr. Mohseni Mofidi's driving record, which is somewhat concerning, and included some recent offences (proceeding contrary to sign at an intersection in February 2017; and failing to stop at a red light in June 2016). We accepted Ms Smith's point, however, that the record is to be considered against Mr. Mohseni Mofidi's 29-year history as a licensee, and note that these are relatively minor HTA offences, with fines associated with them.

#### 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, we noted that Mr. Mohseni Mofidi is just shy of 70 years old, and there was no evidence before us of any alternative employment available to him. He is not completely fluent in English. It seemed unlikely to us that he would be able to successfully find another avenue of employment. It did not appear to be in dispute at the hearing that his personal circumstances were such that it would be a hardship to his family if his taxi driver's licence were revoked.

February 23, 2017

That said, we did not think that Ms Mofidi provided any compelling reason why the period of suspension should be shorter than 14 days. While, unfortunately, the financial hardship will rebound on the family, we were still of the view that a 14-day suspension is necessary to express our concern at Mr. Mohseni Mofidi's driving and criminal record and that there should be consequences for these. Like Ms Smith, however, we were cognizant that Mr. Mohseni Mofidi has already, from a practical perspective, served a four-month period of suspension, with the associated financial consequences, given that he was banned from driving any vehicle (including a taxi) for that period.

The Tribunal would have considered adding a condition requiring Mr. Mohseni Mofidi to report to MLS any charges or convictions he may incur during the probationary period, but Ms Smith assured us that such a condition is no longer necessary, as MLS is now able to track such information electronically, respecting City licensees. We draw Mr. Mohseni Mofidi's attention to the fact that MLS has the ability to monitor any future charges and convictions, and may decide to return the matter of his licence to the Tribunal.

## **DECISION**

The Tribunal ordered that Mr. Mohseni Mofidi's taxi driver's licence to issue, subject to the following conditions:

- (1) The licence will immediately be suspended for a period of 14 days, and Mr. Mohseni Mofidi is to submit his photo card and taxi licence to MLS;
- (2) Upon issuance, the licence will be placed on probation for a period of four years;
- (3) Prior to each of the next four renewals of the licence, Mr. Mohseni Mofidi must provide to MLS, at his own expense, original updated abstracts of both his criminal record and his driving record;
- (4) During the probationary period, if MLS has concerns with the information set out in the criminal or driving abstracts, or with any new charges or convictions, those matters and report No. 6485, and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

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

[Reference: Minute No. 54]

**Date Signed:** March 23, 2017