

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: June 8, 2017

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

Re: Mr. Temal Ryan Gilbert (Report No. 6729)
Applicant for a Tow Truck Driver's Licence (Application No. B676429)

Counsel for Municipal Licensing and Standards: Ms. Lauren Elliot

INTRODUCTION

In October 2016, Mr. Gilbert applied to Municipal Licensing and Standards (MLS) of the City of Toronto for a Tow Truck Driver's licence. MLS reviewed Mr. Gilbert's history of charges and convictions under the *Criminal Code*, the *Highway Traffic Act* and the *Compulsory Automobile Insurance Act*, along with his driving record. MLS denied his application. Mr. Gilbert appealed that denial and the Toronto Licensing Tribunal held a hearing on this matter on June 8, 2017.

The issue before the Tribunal was whether Mr. Gilbert should be granted a Tow Truck Driver's Licence.

FACTS

Ms. Alice Xu, Supervisor with MLS, testified on behalf of MLS. Her staff prepared Report No 6729, along with several updates. The report relates to Mr. Gilbert's Tow Truck Driver application. The Tribunal marked Report 6729, including the updates, as Exhibit 1. Referring to Exhibit 1, Ms. Xu outlined for the Tribunal Mr. Gilbert's history of offences and driving infractions.

Ms. Xu highlighted documentation in Exhibit 1 showing that between September 2011 and May 2016, a period less than five years, Mr. Gilbert accumulated more than 15 convictions for offences related either to driving or to failing to have appropriate driving or vehicle-related documentation. Ms. Xu set out that Mr. Gilbert's licence has been suspended on occasion, and that he has incurred further charges and convictions for driving while under suspension. She provided evidence that Mr. Gilbert owes several thousand dollars in unpaid fines.

Mr. Gilbert cross-examined Ms. Xu and established that although he had two criminal charges of break and enter, he had only one conviction, and the conviction did not relate to the incident in the occurrence report included on pages 113-122 of Exhibit 1.

Ms. Xu noted that, according to Mr. Gilbert's most recent Driver's Abstract, his provincial driver's licence is currently suspended.

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Mr. Gilbert testified, was cross-examined, and answered questions from the panel. He provided details about certain of his charges and convictions. With respect to the 2017 disobey stop sign charge and conviction, Mr. Gilbert stated that the police officer did not actually see him disobey a stop sign, due to their relative locations. He added that he did not receive mail alerting him that the case was to be heard, so did not defend the charge.

Mr. Gilbert testified that he went this past Monday (June 5, 2017) to reopen his most recent convictions, the ones which caused his driver's licence to be suspended. He acknowledged that he owes approximately \$3500 in unpaid fines.

Mr. Gilbert provided explanations for both instances in 2015 where he was charged with break and enter. He said that, in June 2015, an ex-girlfriend's parents accused him of theft and his fingerprints were indeed present in their house, for innocent reasons; and in September 2015, he innocently helped a friend remove property which he believed rightfully belonged to the friend. Mr. Gilbert stated that he plea bargained so as to end up with one conviction on these two separate break and enter charges.

Mr. Gilbert acknowledged that when he was younger, he acted foolishly. He had access to a vehicle for the first time, and wanted to drive. It was his parents' car, and he drove it without keeping track of the documentation. He did not take responsibility for his actions, or realize that driving is a privilege. Since then, he has changed his life.

Mr. Gilbert stated that he now has two children, one aged almost 4 years and the other 10 months, who do not live with him. He has a high school education. He was laid off from Foot Locker. He currently lives with a roommate and collects employment insurance benefits. He would like to work, but his criminal record makes it difficult to find a job in retail. If granted a licence, he would have a job with Metro-Wide Roadside Assistance (Icon Auto Centre). He provided a letter to that effect, signed by Mr. Tony Le, which was entered as Exhibit 2.

SUBMISSIONS

Ms. Elliot argued for MLS that Mr. Gilbert's application should be denied. She asserted that, the *Toronto Municipal Code*, § 545-4.C provided grounds to deny the application, and that under § 545-4.C.1, Mr. Gilbert met the administrative thresholds for denial of the licence. She noted that in order for MLS to grant a Tow Truck Driver's licence, the applicant must have a provincial driver's licence in good standing, which Mr. Gilbert did not. She asserted that while many of Mr. Gilbert's driving offences fall at the "lower end of the spectrum," he had repeated offences over a short time, and had not corrected his behaviour over some years. Ms. Elliot pointed out that Mr. Gilbert is only 24 years old and has held a provincial driver's licence for just a few years, yet has accumulated an extensive record of driving and vehicle-related convictions. Ms. Elliot pointed out that Mr. Gilbert's driving convictions are directly relevant to the proposed employment, which involves driving. She referred to Mr. Gilbert's criminal conviction for break and enter with intent, which also raises concerns for MLS. MLS is not confident that Mr. Gilbert has taken full responsibility for his actions. Ms. Elliot asserted that MLS does not believe enough time has yet elapsed for Mr. Gilbert to demonstrate that he has changed.

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Mr. Gilbert submitted that the Tow Truck Driver's licence should issue. He noted that he owes over \$3500 in fines, and has financial obligations such as paying rent, feeding himself, and feeding two other mouths. Obtaining the Tow Truck Driver's licence would provide him with an opportunity to pay his dues, including paying off fines. He asserted that the company which has offered to hire him sees that he has changed and that over the past three years, he has followed the rules. He believes he can resolve the provincial driver's licence suspension "today or tomorrow." He will not be able to pay his way with the jobs he has been able to get.

ANALYSIS AND CONCLUSIONS

The Tribunal denied Mr. Gilbert's application for a Tow Truck Driver's Licence.

In reaching our decision, we applied the Tribunal's mandate, set out in part in the *Toronto Municipal Code*, § 546-8.A(3)(c):

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

We were satisfied that Mr. Gilbert established his need to make a livelihood. We considered the protection of the public interest, if the Tribunal were to grant Mr. Gilbert a Tow Truck Driver's Licence today.

We were not convinced that the public interest would be protected if we granted a licence, given that Mr. Gilbert's provincial driver's licence is currently suspended, that he incurred a high number of convictions in a short period of time, that he owes thousands of dollars in unpaid fines and did not outline any plan to pay these, and that his criminal conduct occurred only two years ago.

The thrust of Mr. Gilbert's argument before the Tribunal was that, while he has made mistakes in the past, he has changed, and is now prepared to conduct himself in a much more law-abiding and responsible manner than when he was a younger man.

The Tribunal does see cases where an applicant or licensee has turned over a new leaf following a period of concerning past behaviour, and sometimes we grant licences in such circumstances, usually on probation, with conditions. We did not do so in Mr. Gilbert's case, however, because we did not have sufficient evidence to conclude that Mr. Gilbert had truly changed his ways such that we could be sure that he did not pose a risk to the public, or that he would, from now on, conduct himself with honesty and integrity, and in accordance with the law.

Although he argued he has shown an improving driving pattern, Mr. Gilbert incurred six charges in 2016. A charge of failing to have an insurance card from November 2016 and one of failing to display motor vehicle plates from May of 2016 both resulted in convictions in May 2017. Mr. Gilbert incurred a further charge (disobey stop sign) in April 2017; he was convicted of this on May 26, 2017, less than two weeks before the Tribunal hearing. We did not find his explanation for the charge (that the police officer charged him without actually seeing the offence), or for the conviction (that he did not receive notice as he did not collect his mail) particularly convincing or reassuring. We note that Mr. Gilbert stated he does not have a car at the moment, yet he incurred this

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very recent driving charge and conviction. The suspension for unpaid fines was imposed in May 2017.

Mr. Gilbert did not provide any supporting documentation related to applying to reopen some convictions. Further, there was evidence before the Tribunal showing that, in February 2017, the status of two convictions was “reopening allowed,” but that those same two matters were registered as convictions on May 16, 2017. We were puzzled how Mr. Gilbert could then have reopened the convictions again, last Monday.

We were left overall with strong documentary evidence that Mr. Gilbert has many driving and vehicle/documentation-related convictions, including the very recent one, and that his driver’s licence is currently suspended. Countering this, we had Mr. Gilbert’s unsupported testimony that certain of those convictions may, at some future point, be reopened, and that his licence may therefore be reinstated. This was not a strong enough foundation for us to be assured that Mr. Gilbert’s driving habits have significantly and permanently changed for the better. Even if Mr. Gilbert successfully reopens some recent convictions and successfully has them overturned, he would still have a concerning record of driving offences.

Mr. Gilbert described various reasons that he was not aware of licence suspensions, court dates, etc., as he had moved three times in the past year and a half, and had not received mail about these matters. The Tribunal was not satisfied that Mr. Gilbert would, therefore, be fully governable by MLS, since he had not demonstrated an understanding of the importance of having a system for receiving official communications. Mr. Gilbert did not seem to take responsibility for various instances where he failed to complete a legal or administrative task. This left us wary about granting a probationary licence with conditions. There are ongoing administrative requirements associated with keeping one’s licence in good standing, more so if the licence has conditions imposed on it. Mr. Gilbert’s convictions for driving while suspended also caused us concern with respect to his governability.

Turning to the criminal conviction related to the June 2015 charge, the Tribunal noted that the sentence on the break and enter conviction was quite light, perhaps implying that the trial judge concluded this was an offence on the less serious end of the spectrum. Still, we had concerns about two charges and one conviction of this nature related to conduct from only two years ago. Mr. Gilbert is still on probation related to that conviction.

Mr. Gilbert said he is ready to change his ways, and indeed he has taken steps to secure an offer of employment that would have provided him with a well-paid job, allowing him to support himself and contribute to the support of his children. He appears to have gained some insight into how his past conduct has caused his present difficulties. He testified in a calm and respectful manner before the Tribunal.

In the end, though, these few positive factors could not overcome the facts, described above, raising concerns about Mr. Gilbert’s honesty, integrity, ability to comply with the law, all of which in turn raise concerns about public protection, if he were granted a licence.

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It may be that if Mr. Gilbert applied for a licence at some point in the future, and was able to show that he had kept his driving record clean by driving in accordance with the law, he had incurred no more criminal charges or convictions, he had entered into a payment plan to pay down his fines, and his provincial driver's licence was in good standing, that application might succeed (although this Tribunal cannot predict with certainty what MLS or a future Tribunal panel may decide). Mr. Gilbert was not able to demonstrate such factors today and therefore we deny his application.

Originally Signed

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

[Reference: Minute No. 173/17]

Date Signed: September 7, 2017