

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

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**Date of  
Hearing:**

January 12, 2017

**Panel:**

Daphne Simon, Chair; Aly N. Alibhai and (Hedy) Anna Walsh Members

**Re:**

Drae J. Main  
Applicant for a Tow Truck Driver's Licence (Application No. B657294)

**Counsel for Municipal Licensing and Standards:**

Mr. David Gourlay

### **BRIEF BACKGROUND**

1. Mr. Drae Main ("Mr. Main") has requested to appear before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not a Tow Truck Driver licence should be issued, have conditions placed on it or if the application should be denied.
2. The City takes the position that the application should be denied and that a licence should not be issued.
3. Mr. Main chose to represent himself at the hearing and acknowledged that he understood that he had a right to legal representation.

### **CITY'S EVIDENCE**

All witnesses who gave evidence at the hearing were sworn or affirmed. The City called one (1) witness.

4. Ms. Olga Kuztelska, ("Ms. Kuztelska"), Supervisor, Municipal Licensing and Standards ("MLS"), identified MLS Report # 6694 dated September 21, 2016, and update dated December 19, 2016, consisting of forty-five (45) pages (the "Report"). Mr. Gourlay submitted this Report as evidence, without objection from Mr. Main. It was marked as Exhibit # 1. Part of Ms. Kuztelska's duties is to review the report to ensure that all information in the Report is brought before the Tribunal in a fair and accurate way.
5. Ms. Kuztelska identified the following portions of the Report:
  - Page 4 – 3 Year Driver Record showing a conviction on July 25, 2014 for Speeding 148 km/h in a 100 km/h Zone.
  - Page 8 – Chart of Highway Traffic Act and Criminal Code charges and convictions registered against Mr. Main.
  - Page 37 – An update to the Report containing further information regarding the Threaten Death/Bodily Harm Criminal Code charge.

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- Page 40 – 49 Toronto Police Service Occurrence Report for Threaten Death/Bodily Harm charge against Mr. Main.
6. Ms. Kuztelska testified that Mr. Main was charged with Threaten Death/Bodily Harm in regards to a domestic situation. The allegations involve Mr. Main's ex-girlfriend, the mother of his daughter, and related to an incident that occurred while she was dropping off their daughter to his home for a pre-arranged visit. When his ex-girlfriend insisted on entering Mr. Main's apartment, contrary to his wishes, he allegedly became angry and verbally abusive and threatened to kill her.
  7. Ms. Kuztelska testified that according to an Integrated Court Offences Network (ICON) report, the criminal charge against Mr. Main remains outstanding with no new court date assigned. A printout from the ICON system showing this was marked as Exhibit #2 and entered into the record without any objection from Mr. Main.

### **EVIDENCE OF DRAE MAIN**

8. Mr. Main is 23 years old and lives with his mother. His mother and father are separated. His father is a tow truck driver and has worked in the business for over 20 years. His father has an excellent reputation in the industry and has good connections. He would like to obtain his tow truck driver licence to eventually work alongside his father. He stated that he has learned a lot about being a tow truck driver from his father.
9. He began a relationship with Ms. V. many years ago and they had a daughter together who was born in April 2012. The relationship deteriorated around mid-2015 when Mr. Main discovered that he was not the father of Ms. V's second child. He maintains that she has some resentment and unresolved anger from the break-up of the relationship after she gave birth to her second child and that is why she is fabricating stories that have resulted in criminal charges against him.

Mr. Main provided testimony regarding the following:

#### **10. Threaten Death/Bodily Harm Charge of January 16, 2016**

Mr. Main stated that Ms. V attempted to forcefully enter his home during the drop off of their young daughter. He tried to close the door on her and made a waving motion saying "bye bye" and not a gun motion, as alleged in the police information. He admitted that he responded angrily and that this could have made her uncomfortable. Mr. Main denies the allegations that he threatened to kill Ms. V.

12. He testified that he was the one who called the police in this situation and therefore that he is the complainant. He now regrets calling the police because he was criminally charged and this has negatively impacted his ability to see his daughter. He has been pursuing access rights to his daughter for over a year now and pays child support every month.

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13. Mr. Main provided documentation to show that he had entered into a peace bond to resolve the criminal matter, thereby correcting the City's evidence that this matter was still active in the criminal courts. He submitted a document called Recognizance to Keep the Peace, dated November 1, 2016 which was entered as Exhibit #3 without objection from the City.
14. In order to obtain the peace bond, he was required to complete a program called PARS (Partner Assault Response Program). This was a 12 week program which he attended for 4 hours every Saturday. The program commenced on June 1, 2016 and he completed it on September 1, 2016.
15. Mr. Main stated that he learned a lot from the program, especially with regards to strategies on how to keep anger in check, de-escalate a situation, take a step back or go for a walk when things become heated during a domestic situation. Mr. Main stated that he is receiving favourable reports from the Access Centre with regard to his visitation rights with his daughter.
16. July 25, 2014 for Speeding Conviction 148 km/h in a 100 km/h Zone

Mr. Main explained the reason for speeding on this occasion. He had rented a sports car and was driving up north to a cottage with some friends. He stated he didn't know he was going that fast and that he had never driven outside of the city before. He admits that this behaviour was immature and dangerous. He noted that this took place 2.5 years ago and that he has grown up and matured a lot since his daughter was born.

17. With respect to his work life, he stated that he started school to become a gas technician at George Brown College in September 2015. He also works as a plumber's apprentice in his spare time. Finally, he is on call with the City of Toronto as a snow-plower during the winter months. Ideally, he would like to work full time as a tow truck driver like his father and cousin.

## **SUBMISSIONS**

City's submissions:

18. The City takes the position that a licence should not be granted. In his closing submission, Counsel for Municipal Licensing and Standards indicated that Mr. Main is a young man and has taken some steps in the right direction but that not enough time has passed since his Highway Traffic Act conviction to show that he is not a threat to public safety. He stated that it has only been 2.5 years and that his driving record remains relevant to his application for a tow truck driver licence. Mr. Gourlay noted that Mr. Main has an otherwise clean driving record, but that this is not particularly impressive, given that he does not own a vehicle or drive every day.
19. The City submits that Mr. Main did not take full ownership of the events that transpired with regard to the criminal charges. Counsel for the City submitted that Mr. Main was legally obligated to admit that his anger response made his ex-partner feel threatened in order to receive a peace bond. Further, the seriousness of the criminal charges is a concern, as are the words that he allegedly uttered at the time

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"I'm going to f\*\*\*\*\*g kill this b\*\*\*h", especially since he will be dealing with members of the public in his work as a tow truck driver, often under stressful circumstances.

20. Counsel for the City submitted that the 12 week PARS course was not sufficient to demonstrate that Mr. Main has learned to manage his anger issues. The City took the position that with the passage of time, and a clean driving record and criminal record, Mr. Main may be a suitable candidate for a tow truck driver licence, but that a licence should not be given at this point.

Mr. Main's submissions:

21. Mr. Main submitted that he is ready to work as a tow truck driver. He's learned a lot about the business from his father and wishes to emulate his father's excellent reputation and example in the industry. He has the driving skills required to operate a tow truck based on his experience working with heavy machinery. He operates a snow-plow truck for the City of Toronto, drives at night, is aware of pedestrians on side streets and has the driving skills required to do the job.
22. He has benefitted from the PARS program and is working hard to get his personal life on track. He is close to bringing his family law matter to a close with respect to matters relating to access and visitation with his daughter.
23. With regard to the speeding conviction, he expressed remorse and said it was a learning experience. He realizes now the dangerous situation that he put himself and others in when driving at a high rate of speed.
24. He is remorseful about the events that transpired, has accepted everything and wants to move on with his life. He acknowledged his own shortcomings and apologized. He wishes to have a peaceful relationship with his ex-partner and ensure that his daughter is well cared for.

## **DECISION**

S. 546-4.A (1) of the Toronto Municipal Code sets out the grounds for granting or renewing a licence:

- A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:
  - (1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or
  - (2) There are reasonable grounds for belief that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
  - (5) The conduct of the applicant or other circumstances afford reasonable grounds to believe that the carrying on of the business by the

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applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety.

25. The Tribunal considered all of the evidence presented, including the testimony of Mr. Main and Ms. Kuztelska and concluded that this was not a case for denial of a licence.
26. The Tribunal found Mr. Main's testimony to be credible and consistent. His explanation regarding the criminal matter and the fact that he was the one to call the police and was therefore the complainant was supported by the police information contained in the Report.
27. The Tribunal noted that the criminal matter was no longer before the courts because of the actions taken by Mr. Main and his lawyer to pursue early resolution, his attendance at the PARS course and the peace bond into which he entered. Mr. Main, in the Tribunal's view, was genuinely self-reflective and remorseful in examining his own behaviour and taking ownership for it, something that he seemed to learn from the PARS course and his maturation over the last few years.
28. Mr. Main presented himself to the Tribunal as an articulate, bright and thoughtful young man who had made some mistakes in the past and is now making a concerted effort to turn things around for the better. The Tribunal found him to be sincere, authentic and credible. He never wavered and was consistent in his testimony. He has taken steps to improve his situation by going to school at George Brown College.
29. The Tribunal noted that Mr. Main is supporting his daughter and felt that the income he could earn as a tow truck driver exceeds that which he could generate for himself through the other work that he is doing as a plumber and snow-plower.
30. § 546-8.3(c), subsection (c) which requires that the Tribunal:

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.
31. The Tribunal was of the view that the 2.5 years that have passed since Mr., Main's speeding conviction was a sufficient amount of time to ensure that Mr. Main would not be a threat to public safety should a licence be issued to him.
32. In light of the fact, however, that the City has advocated for a denial of a licence and is basing its position on the premise that the Criminal Code charges and HTA offence are serious and given the Tribunal's mandate to balance the public interest with the right of the applicant to earn a livelihood, the Tribunal decided to issue the licence with conditions as follows:
33. Mr. Main's application for a tow truck driver's licence will be issued, effective immediately, subject to the following conditions:

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- a) Immediately upon being issued, the licence will be placed on probation for a period of four (4) years to commence on the date of issuance;
- b) Prior to each of the next four (4) renewals of the licence, Mr. Main must provide to MLS, at his own expense, an original updated abstract of his driver's record and his criminal record; and
- c) During the probationary period, if MLS has concerns with any new charges or convictions, those matters and Report # 6694 and any updating material may be brought back before the Tribunal for a full hearing.

Originally Signed

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Daphne Simon, Chair

Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

[Reference: Minute No. 7/17]

**Date Signed:** January 26, 2017