

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: June 15, 2017

Panel: Melina Laverty, Chair; Aly N. Alibhai and (Hedy) Anna Walsh, Members

Re: Shahid Ali Khan (Report No. 6642)
Applicant for a Taxicab Driver's (Vehicle-For-Hire) Licence (Application No. B650998)

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

Punjabi Interpreter for Licensee: Mr. Yash Kapur

INTRODUCTION and ISSUE

1. In June 2016, Mr. Shahid Ali Khan ("Mr. Khan") applied to the Municipal Licensing and Standards Division (MLS) of the City of Toronto for a Taxicab Driver's Licence. MLS denied to issue a licence due to Mr. Khan's record of charges and convictions. Mr. Khan requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine if a Taxicab Driver's Licence should be issued, have conditions placed on it or be denied.
2. Mr. Khan was advised of his right to legal representation. Mr. Khan indicated that he understood that he had a right to be represented, but that he would proceed without representation.
3. The issue before the Tribunal was whether Mr. Khan's conduct (including charges and convictions under the Highway Traffic Act (HTA), the Compulsory Automobile Insurance Act (CAIA), the Criminal Code (CC), the Canadian Citizenship Act (CCA), and the Trespass Property Act (TPA) provides reasonable grounds to believe that: Mr. Khan will not operate a Taxicab in accordance with the law, and with honesty and integrity; his carrying on of the operation of a Taxicab will result in a breach of the law; and his operation of a Taxicab would infringe or endanger public health and safety.
4. After hearing the evidence and submissions of MLS and Mr. Khan, the Tribunal denied to issue a Taxicab Driver's Licence to Mr. Khan for the reasons set out hereafter.

CITY'S EVIDENCE

5. The City called Ms. Alice Xu, Supervisor of Licensing Services, as a witness.
6. After being affirmed, Ms. Xu testified that she was familiar with MLS Report No. 6642, ("the report") dated July 21, 2017, and signed by Mr. Terry Van Elswyk,

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former Supervisor, Licensing Services. MLS staff created the report, and Ms. Xu had reviewed it and could attest to its contents. The report (pgs. 1 to 89) was entered into evidence, and marked as Exhibit #1, without any objection. Ms. Xu also indicated that MLS had updated a chart of certain charges and convictions registered against Mr. Khan on June 14, 2017 based on information from the Integrated Court Offences Network (ICON), that chart along with four pages of supporting ICON data was marked as Exhibit #2, without any objection. At that time, Ms. Xu noted two errors in the chart: the word brake was misspelled and the upcoming court date is January 18, 2018.

7. Ms. Xu testified to the contents of Exhibits 1 and 2, and in particular, the following:

- a. A police criminal records check from May 2016, which showed no criminal convictions, discharges, or other actions registered against Mr. Khan (p. 4).
- b. A three-year provincial driver record abstract for Mr. Khan, dated June 2, 2016, showing no record. (p. 5)
- c. A chart prepared by MLS staff and last updated on July 5, 2016, outlining charges and convictions registered against Mr. Khan, based on information from the ICON (pgs. 11-27). This chart also shows numerous outstanding fines. For example, at line 12 of the chart, Mr. Khan was convicted of three offences including “operating vehicle no insurance,” “drive while under suspension” and “drive motor vehicle using handheld device” and fined \$18,762. On page 42, the ICON report indicates that Mr. Khan has only paid \$375 towards this fine. The chart includes many large fines for convictions registered against Mr. Khan that remain unpaid.
- d. A record of arrest from the Brantford Police Service in which Mr. Khan was charged with “Breach of Probation Order” and “Enter premises when entry prohibited” under the TPA on August 2, 2011 (pgs. 80-84). In reviewing the synopsis, Mr. Khan was on the gaming floor of an OLG casino while under a Trespass Prohibition and that since September 2, 2005, Mr. Khan had been served with 10 separate Trespass Notices.
- e. An updated chart prepared by MLS staff and last updated on May 25, 2017, outlining one charge (“ineffective seatbelt”) from September 5, 2015, which was withdrawn on September 16, 2016, based on information from the ICON (pgs. 87-89).
- f. Exhibit 2 shows two charges registered against Mr. Khan for “defective brakes” and “improper tire on vehicle,” which occurred on May 19, 2017, and for which the next court date is January 18, 2018.

8. Mr. Khan did not cross-examine Ms. Xu.

APPLICANT'S EVIDENCE

The Applicant appeared on his own behalf, without legal representation, was duly sworn and testified as follows:

9. He is not contesting anything that has been said by Ms. Xu. He realizes he has made mistakes and his outstanding fines are huge.

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10. He is finding it difficult to repay these fines and has been slowly paying them. He brought receipts showing recent payments made. These were copied and entered as Exhibit 3, with no objection. [Exhibit 3 showed receipts from the Brampton Provincial Offences Office of \$150 paid on September 30, 2016, \$100 paid on May 2, 2017, and \$100 paid on June 1, 2017, as well as one receipt for the Toronto South POA office for \$100 paid on June 15, 2017].
11. He has learned a lesson the hard way. He is ready to start a new life and is asking for a second chance. He needs the licence to take care of his responsibilities to pay for these fines and to care for his family.

Mr. Gourlay cross-examined Mr. Khan and during cross-examination, Mr. Khan testified as follows:

12. The many convictions [in the report] are accurate.
13. With regard to the fines, aside from the payments set out in the receipts, the information about the fines he owes outlined in the MLS chart are accurate.
14. With respect to the conviction for “cheat at play,” Mr. Khan testified that:
 - a. He was at the casino with a friend. They were playing poker (three-card Texas Hold’em) and he was caught passing a card to his friend; and
 - b. He did fight the charge but he lost his case. The penalty was a fine but no jail time. His friend paid the fine.
15. With respect to the “Prohibition Order” and the arrest report of the Brantford Police which suggests that despite this Order Mr. Khan entered casinos multiple times, he testified that he thought the restriction from entering casinos was only for five years.
16. When asked if the 2011 incident in Brantford was the first time he was told not to enter a casino, Mr. Khan testified that it was, and that he has not entered a casino since that time. Mr. Khan then went on to state that the information in the arrest report at p. 82 showing 11 occurrences [of trespassing in a casino] since September 2005 was correct. That is, he had in fact entered a casino after 2005 and before the August 2011 incident in Brantford, and this had happened in Niagara, and when he had played slots in 2010 at Woodbine. Each time, he was asked to leave the casino, yet he still went back to casinos again. Though initially he thought that the restriction was only for five years, he admits that he continued to enter casinos even after he knew that he was prohibited from doing so. He kept going back to casinos, because he lost a lot of money and was hoping to recover it. But he no longer goes to them. He has not been to a casino for the last five to six years.
17. He admits that he has five convictions for “operating a vehicle without insurance.” When asked why this continued to happen even though the fines were large (exceeding \$10,000 the third time), he stated that this was his mistake and his foolishness. He also admits that he has been convicted four times for “driving while suspended.” He stated that those were his mistakes and that he is sorry for

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all his mistakes. Though he continues to have many outstanding fines from these convictions, he indicated that he does not have a court-approved payment plan. His driver's licence has been suspended for unpaid fines, but once he started paying his fines in September 2016, he got his licence back. Before that, he had no driver's licence for three or four years.

18. He has no full time or regular job. He does temporary labour jobs in factories, such as packing boxes. He does this about five or six days in a month. He is married and his wife does not work. He also receives disability support, but claims that his disability would not impact upon his ability to operate a vehicle.

Panel members questioned Mr. Khan and he testified as follows:

19. He is in counseling and sees a family doctor regularly, and attends at a nearby hospital.
20. He has six children between the ages of 20 and 30. Two of them live at home and the other four are married and live elsewhere.
21. He wants to drive a taxi to support his family and plan for the future. He does not have any other skills and that is why he is seeking to work as a taxi driver. He has never driven a taxi before, however, and has not obtained employment with any particular agency. He thinks that he would enjoy this kind of work, as he would have a flexible schedule. He also has friends who drive a taxi that have promised to help him out. These are not the same friends involved in the casino incident, as that particular friend has since left the country.
22. Before coming to Canada in 2001, he had worked in a factory stitching bedsheets, but that kind of work does not exist here. When he first came to Canada, he worked in a factory packing food items, and he still does this type of work about five days a month.

On re-examination by Mr. Gourlay, Mr. Khan testified that:

23. His two children, who are in their twenties and live at home, both have part-time jobs, and one of them is also a student.

Mr. Khan did not call any witnesses to testify on his behalf.

CITY'S SUBMISSIONS

In his closing submissions, Mr. Gourlay, on behalf of MLS, submitted that a Taxicab Driver's Licence should not be issued to Mr. Khan at this time. In particular, he submitted that:

24. Mr. Khan has had significant issues of past noncompliance with the law, including some concerning driving convictions, and the totality of the information presents concerns for MLS about Mr. Khan driving a taxi and operating such a business.

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25. Mr. Khan has been convicted five times for “operating a vehicle without insurance.” This is a serious offence as it puts the public at risk, potentially of a life threatening or altering nature, should Mr. Khan be involved in a serious car accident. Even after Mr. Khan was convicted of this offence the first time in October 2008 and incurred significant fines, his actions did not “hit home.” Mr. Khan clearly did not learn any lessons as only a month after this conviction in November 2008, he was charged with the very same offense. Then again in February 2010, he was convicted of three offenses of “operating a vehicle without insurance,” “drive a vehicle no permit” and “driving while suspended” two days in a row. After those incidents in August 2010, Mr. Khan was charged again with “operating vehicle without insurance,” “driving while suspended” and “driving while using a handheld device. Mr. Khan’s outstanding fines are over \$35,000 for these offences.
26. Mr. Khan was convicted of “driving while suspended” four times which is also a more serious driving offence. In MLS’s view, Mr. Khan has shown a complete disregard for the law. He has failed to take responsibility and meet the two minimum requirements for driving a vehicle in Ontario that is holding a valid licence and having vehicle insurance. Mr. Khan has also been convicted of driving a car without a permit. Though Mr. Khan has recently started making payments for his fines, his outstanding fines are enormous. Mr. Khan has not come to terms with how serious his past misconduct was.
27. Though the report on page 5 shows Mr. Khan as having a “clean” driving record, Mr. Khan admits he was mostly unlicensed during that time period.
28. Looking at Exhibit #2, the two charges registered against Mr. Khan are for not maintaining a vehicle (“defective brakes” and improper tire on vehicle”) and occurred on May 19, 2017. These charges also raise concerns about public safety and add to the concern that Mr. Khan continues to demonstrate that he is unable to comply with the rules of the road.
29. Mr. Khan’s conviction for “cheat at play” from 2004 is considered to be an honesty offence by MLS. Following this conviction, Mr. Khan showed a recurring pattern of going to casinos when he was prohibited from doing so. This happened 11 times with the last offence in 2011. Mr. Khan has indicated that he had a problem with gambling and had accumulated debts then, and Mr. Khan continues to have debts with many outstanding fines. Mr. Khan stated that he has made mistakes in the past, but there are few assurances that he has moved on.
30. In MLS’s view, the concerns about Mr. Khan’s ability to comply with the law and his ability to operate a business with honesty and integrity outweigh his interest in making a livelihood as a taxi driver.

APPLICANT'S SUBMISSIONS

Mr. Khan accepts all that has been said today. He requests that the Tribunal give him a second chance He submitted that:

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31. He does not go to casinos anymore, and has not done so since 2011. Had he done so, that would have been evident as he would have been charged with an offence.
32. He does not own a car. With respect to the incident from May 2017 when he was stopped, he was driving his son's car. He assures the Tribunal that he drives carefully and will follow the rules.
33. He admits he has made many mistakes, but that he is older now and wants a second chance to start a new life.

DECISION

34. In considering whether to grant or deny a licence, or to grant a licence with conditions, the Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
35. Section 546-4 of the Toronto Municipal Code sets out the reasons for denying a licence, including the following:
 - a. The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
 - b. There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
 - c. The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.
36. Having weighed the evidence, the Tribunal is satisfied that MLS has shown that there are reasonable grounds to deny a Taxicab Driver's Licence to Mr. Khan. Mr. Khan has not complied with the law in the past and has engaged in conduct which threatened the health or safety of members of the public. Though Mr. Khan has indicated that he is older now and is looking for a second chance, there is insufficient evidence at this time to conclude that he has truly changed his ways. The Tribunal is of the opinion that there are reasonable grounds to believe that Mr. Khan has not complied with the law in the past and will not comply with the law in the future and that the issuance of a Taxicab Driver's Licence would endanger members of the public.
37. In particular, the Tribunal notes that Mr. Khan has had numerous serious driving offences (five (5) convictions for operating a vehicle without insurance and four (4) convictions for driving while suspended). The seriousness of these offences is

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reflected in the large fines incurred. It also shows a recurring pattern that, in spite of these convictions and fines, Mr. Khan did not take his mistakes seriously or show an ability to comply with the law, but instead made the same mistakes over and over again.

38. Though Mr. Khan made three recent payments toward his outstanding fines, the total amount he paid (\$350) was nominal compared to the amount he owes (more than \$35,000). Mr. Khan does not have a court-ordered payment plan in place to show that he has made an ongoing commitment to take responsibility for his past conduct.
39. According to Mr. Khan, prior to September 2016 his driver's licence was suspended for three to four years, and thus we are unable to rely on the lack of charges or convictions during that time to demonstrate good conduct or his ability to comply with the law. In fact, after his licence was reinstated in September 2016, Mr. Khan was charged with two offences (defective brakes and improper tire in vehicle) in May 2017. The Tribunal was concerned that Mr. Khan seemed to blame his son for these problems. Whether or not this was his own car, as the driver he is responsible for ensuring that the car he takes on the road is in good working order. The deficiencies as noted with the car, in our view, placed public safety at risk, as both issues (defective brakes and an improper tire) could lead to an accident. Mr. Khan's charges and convictions related to driving cause particular concern for the Tribunal, as these relate directly to the occupation in respect of which Mr. Khan is seeking a licence.
40. Though this offence occurred long ago, Mr. Khan was convicted of "cheat at play" which is an indictable offence under the CC, and an honesty offence in that it requires the intent to defraud. Following this offence, Mr. Khan did not take the fact that he was restricted from entering any casino in Ontario seriously and in spite of warnings and multiple trespass notices, he went into casinos ten or more times. Though Mr. Khan told the Tribunal he has not entered a casino since the last offence, and this appears to be the case based on the evidence before us, it troubled the Tribunal that, as with the driving offences, Mr. Khan showed a blatant disregard for the law over an extended period of time.
41. In its determination of whether a licence should be issued, refused, or have conditions placed upon it, the Tribunal also considered section 546-8 (3)(c) of the Toronto Municipal Code, that is the applicant's (Mr. Khan's) need to earn a living. The Tribunal took note of the fact that Mr. Khan has never worked as a taxicab driver and thus, up until this time, has supported himself and his family through other means. Currently, Mr. Khan receives disability support and works about five to six days a month performing factory labour. This is not a case in which Mr. Khan had no other means to earn a livelihood. Although two of Mr. Khan's children are still at home, those children are older, in their 20s now, and also hold part-time jobs, and so they are only partially dependent.
42. Even though the Tribunal did not issue a licence, Mr. Khan testified that he is older, wants to start a new life and is looking for a second chance. Mr. Khan appears to have taken some small steps in this direction, in that he now abides by the order prohibiting him from entering casinos and has started to make some

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efforts to repay his fines. The passage of time would be to the benefit of Mr. Khan as it would give him the opportunity to demonstrate to the Tribunal and to MLS that he is committed to paying his fines, able to abide by the law and conduct himself with honesty and integrity, and has truly put the past behind him.

Originally Signed

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

[Reference: Minute No. 180/17]

Date Signed: September 20, 2017