

## **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:** Anisan Anton  
Applicant for a Tow Truck Driver's Licence (Application No. 656962)

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

**Counsel for Applicant:** Mr. S. Hasnain

### **INTRODUCTION**

Mr. Anton applied to Municipal Licensing and Standards (MLS) of the City of Toronto for a tow truck driver's licence. MLS denied his application, on the basis that Mr. Anton's conduct provided reasonable grounds to believe that he would not carry on his business in accordance with the law and with honesty and integrity; that his carrying on his business would result in a breach of the Toronto Municipal Code, chapter 545 ("the By-law") or other laws; and that his carrying on his business would infringe the rights of the public, or would endanger public safety.

Mr. Anton requested a hearing before the Toronto Licensing Tribunal to determine whether a tow truck driver's licence should be issued to him. The Tribunal held the hearing on February 23, 2017.

### **Issue**

Does Mr. Anton's driving record and criminal record provide reasonable grounds for the beliefs set out above, such that that the Tribunal should deny Mr. Anton's tow truck driver's licence application?

### **Testimony of Ms Kuztelska**

Ms Kuztelska is the Supervisor, Municipal Licensing and Standards. Through this witness, the City submitted into evidence Report No. 6794 (176 pages) dated September 23, 2016, which was marked as Exhibit 1, without objection by Mr. Anton. Ms Kuztelska's colleague Mr. Van Elswyk, and staff, prepared the report.

The report contains documentation respecting Mr. Anton's charges and convictions under the Criminal Code, the Highway Traffic Act and the By-law.

MLS acknowledged during the course of the hearing that certain pages in the Report were duplicates of each other.

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## **Testimony of Mr. Anton**

During the course of his direct testimony and Ms Smith's cross-examination, Mr. Anton provided further information with respect to his criminal charges and convictions, his driving record and his personal circumstances.

### **Criminal charges and convictions**

On November 16, 2009, when he was 20 years of age, Mr. Anton was charged with six Criminal Code offences, including fraud under \$5,000, possession/use of a [stolen/forged] credit card, and possession of [stolen] property. Mr. Anton was convicted of two counts of "Possession, use, traffic credit card" and was given a conditional discharge.

Mr. Anton told the Tribunal that a friend of his had rented a motel room. Mr. Anton wanted to use the room with his girlfriend. The friend agreed to this plan, and gave him the key. Mr. Anton stated that when he and his girlfriend arrived in the evening, the friend's possessions, including shoes, clothing, liquor, etc., were in the room. As it turned out, the friend's possessions included multiple, unactivated gift cards and credit cards not in his own name. Police attended the motel room the following morning and Mr. Anton was arrested and charged. Mr. Anton recalled that his lawyer at the time advised him that since he had been present in the room, his best choice was to plead guilty to at least some of the charges, so they could argue to have others dismissed.

In June 2010, when he was 21 years of age, Mr. Anton was again charged with a number of Criminal Code offences, including several counts of possession of a stolen/forged/falsified/fraudulent credit card. All charges against Mr. Anton arising from this incident were ultimately stayed.

Mr. Anton told the Tribunal that he was a passenger in his friend's car when the police pulled them over. Police searched the car and found several credit cards. Mr. Anton stated that the credit cards were not his, but were his friend's (the driver's). He recalled that the cards were in the console of the car, and he did not know they were there.

### **Driving record**

Since 2005, Mr. Anton has incurred 29 driving-related charges, including nine speeding charges in 12 years. The most recent speeding charge was laid in February 2016, but that charge was withdrawn. The most recent speeding conviction was for an offence in September 2014.

Mr. Anton stated that he was fascinated with cars as a kid and acknowledged that he made some wrong choices when younger. He said that when he incurred speeding convictions when he was younger, he did not realize the implications this might have in the future.

Mr. Anton commented that some of the speeding charges were incurred when he was driving a "souped up" Honda, which sounded loud, like a racecar, and so attracted police attention.

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Mr. Anton acknowledged that his driving record includes offences where he did not obey the rules of graduated licensing. He confirmed that he now has a full provincial driver's licence. He said, "I was young, I wasn't respecting the law." He only realized later the consequences.

Mr. Anton expressed his intention to take a defensive driving course.

#### Personal circumstances

Mr. Anton finished high school in 2008, and worked as a security guard. He then qualified to apprentice as a mechanic, but was injured in a car accident and afterwards was unable to return to mechanic's work, due to its physical demands. He supported himself on insurance/disability benefits for some time.

Mr. Anton stated that he has completed tow truck training, and has a tow truck driver's job waiting for him with Xpress Towing. He believes he will be physically able to do towing work, as there is more standby time and it is less physically demanding than being a mechanic. He will tow accident wrecks and will therefore not be involved with customers using credit or debit cards, as the clients will be insurance companies.

Mr. Anton said that he no longer hangs out with the friends he had when he was 19 or 20. Those were the friends he grew up with, and some have moved away or have got married and moved on. Mr. Anton stated that he is a different person now, at age 27, than when he incurred many of the charges and convictions. He is in a domestic relationship and has his first child on the way, due in June. He feels he has changed.

## **SUBMISSIONS**

Ms Smith for the City

Ms Smith stated that the City was not seeking a denial of the application. Rather, she recommended that the Tribunal consider granting Mr. Anton a tow truck driver's licence, with conditions.

MLS's concerns are with Mr. Anton's honesty and integrity, his driving record and his respect for authority and the law.

Ms Smith acknowledged that Mr. Anton had provided a compelling explanation for why the 2010 criminal charges were stayed, and that his explanation was consistent with information in the police report. She said the 2009 motel incident was "more questionable," but observed that Mr. Anton entered a plea and received a conditional discharge, and that there is no clear connection between him and the credit cards found in the motel room. Ms Smith further pointed out that these incidents took place in 2009 and 2010, and that some years have passed since then.

Turning to Mr. Anton's driving record, Ms Smith noted that (apart from the outlier in 2016) the record stops in 2014, and there have now been a couple of years in which Mr. Anton's driving has shown improvement.

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Concerns about Mr. Anton's respect for authority and the law arise from the charges of flouting the graduated licensing system, along with a charge of obstruct a peace officer, and the fact that a bench warrant was issued for the charges arising from the November 2009 incident at the motel. Once again, Ms Smith acknowledged that most of this conduct took place when Mr. Anton was a much younger man.

In conclusion, Ms Smith said that while MLS has concerns about public protection, those concerns could be met by issuing Mr. Anton a tow truck driver's licence on probation, with conditions.

Mr. Hasnain for Mr. Anton

Mr. Hasnain agreed with Ms Smith that it would be appropriate to issue Mr. Anton a tow truck driver's licence with probation and conditions. He said that Mr. Anton has proposed a reasonable plan to meet his responsibilities as a man with a child on the way. He said that a 19-year-old youth is of a different mindset than a 27-year-old man. Mr. Anton wants to be a better person and a role model for his child.

Mr. Hasnain noted there was a gap in driving offences after 2014, until the February 2016 charge, which was withdrawn.

Regarding Mr. Anton's criminal charges and convictions, Mr. Hasnain said that Mr. Anton was in the wrong place at the wrong time. He commented that the bench warrants after Mr. Anton's lawyer failed to attend court. Mr. Hasnain noted that there has been a lengthy gap since Mr. Anton's last criminal charge. This gap supports that Mr. Anton has "straightened up" his act and is striving to be a better person.

Mr. Hasnain observed that due to his physical limitations, Mr. Anton's plan to work as a tow truck driver is reasonable.

### **Analysis and decision**

The Tribunal decided to issue Mr. Anton a tow truck 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

The Tribunal considered Mr. Anton's driving record, which reflects numerous instances of speeding when Mr. Anton was a younger man. We agreed with the submissions from both sides that the record had tapered off in the past couple of years, which encouraged us in thinking that Mr. Anton has, indeed, changed the driving habits he had as a young man. We noted Mr. Anton's stated intention to take a defensive driving course, and decided to ensure public protection by building this requirement in as a condition on the licence.

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The criminal charges and convictions, while concerning, were quite far in the past. Further, we were satisfied that we could craft a condition on the licence, to the effect that Mr. Anton was not to handle customers' credit or debit cards, which would allay our concerns about any possible improper possession of such cards in the past. We also noted that while Mr. Anton's work with Xpress Towing will involve wreck towing, and therefore will not involve handling customers' credit or debit cards, we could not be assured that Mr. Anton would continue to work for Xpress Towing, and we therefore decided to add a condition stating that he must inform any tow truck companies he works for, during the probationary period, of the restriction on his ability to handle such instruments.

#### 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 found very compelling Mr. Anton's narrative of his inability to continue as an apprentice mechanic after being injured in a car accident, and his reasonable alternative plan to support his new family by working as a tow-truck driver. We were pleased to note that he has done some training and has work lined up with Xpress Towing.

#### Honesty and integrity

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

Mr. Anton's straightforward demeanour and his testimony before the Tribunal satisfied us that he is a person who accepts and acknowledges his errors of the past, and who has a sincere desire to turn his life around and work to provide for his family. The Tribunal believes Mr. Anton when he says he is a changed person from when he was 19 years old.

The Tribunal would have considered adding a condition requiring Mr. Anton 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.

### **DECISION**

The Tribunal ordered that Mr. Anton's tow truck driver's licence will issue, subject to the following conditions:

- (1) The licence will not issue until Mr. Anton provides MLS with satisfactory proof that he has completed a defensive driving course;
- (2) Upon issuance, the licence will be placed on probation for a period of four years;
- (3) During the four year probationary period, Mr. Anton will be restricted from directly handling credit or debit cards of customers. Mr. Anton's City of Toronto tow truck

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driver's licence and/or photo card will carry an endorsement setting out this restriction. During the four year probationary period, Mr. Anton shall inform any tow truck company he may be employed by of this restriction.

- (4) Prior to each of the next four renewals of the licence, Mr. Anton must provide to Municipal Licensing and Standards, at his own expense, original updated abstracts of both his criminal record and his driving record;
- (5) 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. 6794, 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. 53/17]

**Date Signed: March 23, 2017**