

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

**Date of
Hearing:**

July 20, 2017

Panel:

Aly N. Alibhai, Chair; Melina Laverty and Keith Cooper, Members

Re:

Amir Navarchi (Report No. 6780)
Applicant for a Tow Truck Driver Licence (Application No. B685655)

Counsel for Municipal Licensing and Standards:

Mr. Mathew Cornett

Paralegal for Applicant:

Ms. Michelle D. James

INTRODUCTION

1. Mr. Amir Navarchi (“Mr. Navarchi”) requested a hearing before the Toronto Licensing Tribunal (the “Tribunal”) to determine if a Tow Truck Driver’s Licence should be issued, have conditions placed on it or if the application should be denied.
2. Mr. Navarchi was represented by a licensed paralegal, Michelle James (“Ms. James”)
3. For the reasons that follow, the Tribunal concluded that, at this time, Mr. Navarchi’s application for a Tow Truck Driver’s Licence should be denied.]

FACTS

4. On consent, MLS Report Number 6780 comprising 242 pages together with two separate charts dated May 25, 2017 and July 19, 2017 respectively, and the associated Integrated Court Offences Network (ICON) print-outs for the offences delineated on each of the two charts, was entered into the record as an Agreed Statement of Facts and marked as Exhibit 1.
5. The City did not call any witnesses.
6. Ms. James called Mr. Navarchi as a witness. Mr. Navarchi was affirmed and testified as follows:
 - He is aware of the criminal charges and convictions set out in Exhibit 1 and they are all accurate.
 - During the time that Mr. Navarchi incurred the various criminal charges and convictions set out in Exhibit 1, he took measures to better himself

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including completion of high school, a CPR course, learning a third language and two mandatory programs while incarcerated including anger management and street management.

- Mr. Navarchi's programming while incarcerated was intended to assist him in reintegrating into society upon his release from jail.
- He was last charged with a criminal offence in 2011 or 2012.
- He does not plan to return to a life of crime, having spent one-third of his life behind bars and having overcome a long and difficult struggle to stay out of jail.
- He currently works full-time as a tow truck driver in Durham and started his employment with Prime Towing in the fall of 2016, first with training and then full-time on the job as of December 2016.
- He wants to be licensed as a tow truck driver in Toronto because there are not many jobs available in Durham.
- As an employee of Prime Towing, Mr. Navarchi's movements and speed as well as his whereabouts at all times are monitored by way of a GPS and the system allows his employer to remotely shut down his vehicle at any time through a computer.
- He makes \$900 a week and is paid bi-weekly.
- His monthly expenses include rent in the amount of \$1550, telephone in the amount \$125, groceries in the amount of between \$600 and \$700, Internet in the amount of \$80 and \$1000 for gas.
- Some months he is not able to make ends meet and has to borrow money from friends and family in order to pay all his expenses.
- He used to share the rent for his apartment with a girlfriend and now pays the rent on his own as his girlfriend no longer lives with him.
- He currently has a one year lease for his basement apartment which runs until June 2018 and he has found it very difficult to secure rental accommodation because of his criminal history and has been refused rental accommodation many times.
- He previously worked in construction and has tried to secure employment with the construction company for which he used to work, but was not able to get employment with that company.
- As Prime Towing is based in Toronto and because he needs to increase his earnings, he would like to be licensed as a tow truck driver in Toronto, especially because his earnings in Durham are limited as he is one of four persons who receive calls from the radio that is shared by all the four individuals.
- He receives cash payments as part of his work with Prime Towing in Durham and is required to keep these cash payments until his pay day when he is to turn them into his employer. He has had no issues with the safekeeping of the cash payments that he has received.
- He has tried to obtain other employment and has not been successful because of his extensive and well-publicized criminal history and record.
- He only completed his parole in May 2017 because he violated a condition of his parole by not reporting to the half-way house according to his curfew.

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7. Mr. Cornett cross-examined Mr. Navarchi and during cross-examination, Mr. Navarchi testified as follows:

- Mr. Navarchi took an anger management course while incarcerated as well as other mandatory courses and programming that, in total, consisted of four different programs combined into one program that lasted a little over eight weeks.
- He can drive a tow truck in Durham because Durham does not require a licence to drive a tow truck.
- He started working as a tow truck driver in Durham with Prime Towing in December 2016 after a three-week training period.
- He admitted that the criminal convictions for trafficking in Schedule I and II drugs under the *Controlled Drug Substances Act* as set out at pages 5 and 6 of Exhibit 1 on September 5, 2006 and November 22, 2010 are accurate and involved trafficking in drugs such as marijuana and marijuana derivatives as well as cocaine, heroin, oxycodone and Percocet.
- He acknowledged that he was involved in the sale of all the foregoing types of drugs.
- He spent some twenty-eight months in jail following a one year period of pre-trial custody and was released from jail in June 2015.
- His first job after being released from jail was with Prime Towing in Durham.
- He works full-time with Prime Towing and does not do any commercial towing and only takes calls received over the radio from, for example, the Ontario Provincial Police and fire department for the purposes of providing automotive towing services.
- The *Highway Traffic Act* charges set out at lines two to five at pages 226 and 227 of Exhibit 1 were withdrawn and resulted from him driving a tow truck licensed in the City of Toronto because he was using a tow truck owned by Prime Towing only for purposes of transporting himself to his residence at the time in downtown Toronto and was not towing any vehicles in the City of Toronto.
- While he was first released from jail in June 2015, he violated his parole conditions by not adhering to curfew and, as such, he was returned to jail and his parole was paused. He was released again in the fall of 2016, and completed his parole in May 2017. His parole ended later than it would have ended if he had not violated his conditions on his first release.

He only violated his conditions of parole once and was arrested for his violation of parole when working for a construction company during the summer. .

ISSUE

8. The issue before the Tribunal was whether, pursuant to Chapter 545-4 C of the Toronto Municipal Code there are reasonable grounds to believe that Mr. Navarchi will not carry on the business of tow truck driver in accordance with the law and with integrity and honesty or that the carrying on of the business of tow truck driver by Mr. Navarchi would result in the breach of Chapter 546-4 of the

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Toronto Municipal Code or if the conduct of Mr. Navarchi affords reasonable grounds to believe that his carrying of the business of a tow truck driver would infringe the rights of members of the public or would endanger their health or safety. The Tribunal must also consider the requirement in Chapter 545-4 C.1 of the Toronto Municipal Code that MLS shall refuse to issue a licence where an applicant has not met the business licensing thresholds set out in Appendix K to Chapter 545, Section 1.

C. Grounds for denial of licence.

- (1) An applicant for a licence, or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:
 - (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.....
 - (e) 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.

Administrative thresholds for denial of licence. [Added 2004-01-29 by By-law No. 117- 200452; amended 2004-06-24 by By-law No. 483-200453.

- (1) In addition to the grounds set out in Subsection C of this section, the Municipal Licensing and Standards Division shall, with respect to applications received on or after July 1, 2004, refuse the issuance or renewal of a licence where an applicant has not met the business licensing thresholds as set out in Appendix K to this chapter.

1-C. The Municipal Licensing and Standards Division shall not issue or renew a licence but may recommend that the Toronto Licensing Tribunal issue or renew a licence on conditions if, at the time of an application for a licence or renewal, an applicant has:

.....

- (ii) any restriction code 03 conviction that is more than five years old, but not more than ten years old;
- (v) two or more restriction 04 convictions that are more than five years old, but not more than ten years old.

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SUBMISSIONS

CITY'S SUBMISSIONS

9. In his closing submissions, counsel for the City asked that the application by Mr. Navarchi for a Tow Truck Driver's licence be denied as there are reasonable grounds to believe that Mr. Navarchi has not conducted himself in accordance with the law and with honesty and integrity. In particular, the City submitted as follows:
 - This is Mr. Navarchi's first application for a tow truck driver's licence with the City of Toronto and, as set out at pages 5 and 6 of Exhibit 1, Mr. Navarchi has a long and serious history of criminal convictions, including convictions for trafficking in Schedule I and II drugs, such as heroin, cocaine and other similar drugs.
 - In addition to his convictions for drug related offences, Mr. Navarchi has a history of other serious criminal offences including obstructing the police, failing to comply with recognizance, and firearms-related offences.
 - The circumstances surrounding Mr. Navarchi's various criminal convictions are very serious and resulted in him having to spend a considerable and not insignificant period of time incarcerated.
 - Mr. Navarchi violated a condition of his parole and, as a result, ended up having to go back to jail for about fourteen and a half months. He was most recently released in September 2016, and concluded his parole period in May 2017.
 - Mr. Navarchi has not been out of custody and living outside of jail for a sufficiently long period of time to give the City a level confidence and comfort that he will be able to comply with the law and conduct himself with honesty, integrity and in accordance with the law.
 - The City is concerned that given Mr. Navarchi's longstanding history of drug trafficking and drug-related offences, there is a risk that he may find opportunities for engaging in such criminal activity through the tow truck industry if he is given a tow truck driver's licence at this time.
 - While the City has some sympathy for Mr. Navarchi because he has served his time in jail for his convictions, the City believes that insufficient time has elapsed since his release from jail to indicate, at this time, that Mr. Navarchi will be able to comply with the law.
 - That Mr. Navarchi is able to operate a tow truck in Durham should not be seen as a "stamp of approval" to grant him a tow truck driver's licence in Toronto because, in fact, one does not require a licence to operate a tow truck in Durham.
 - Mr. Navarchi has only been operating a tow truck in Durham since December 2016 and, as such, it has been too short a period of time to make a determination about his suitability for a tow truck driver's licence in Toronto.
 - Mr. Navarchi is earning \$900 a week working full-time as a tow truck driver in Durham and while he has a lot of expenses, some of his expenses are on the high side and, in any event, he is able to earn a

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livelihood as a full-time tow truck driver in Durham, and currently has no dependents.

- Mr. Navarchi needs more time to be able to demonstrate that he can comply with the law and he can always return to the Tribunal in the future after more time has elapsed since his criminal past with a view to clearly establishing that his past is behind him and that he is able to comply with the law and conduct himself with honesty and integrity.

APPLICANT'S SUBMISSIONS

10. Ms. James submitted that:

- Mr. Navarchi has acknowledged his past and the poor choices he made in the past.
- Mr. Navarchi has paid his debt to society and is remorseful for his past conduct and actions.
- Although it is possible to be charged with offences while incarcerated, Mr. Navarchi was not charged with any offences during his period of incarceration.
- Mr. Navarchi has been out on parole and living in society among the general population for a year now and has integrated back into society.
- Mr. Navarchi completed high school and different programming and also learned a third language while he was incarcerated.
- Mr. Navarchi has been employed with Prime Towing in Durham for several months and there have been no complaints about him during his tenure with Prime Towing thus far. His whereabouts when working for Prime Towing is tracked by GPS and he has proven to be a governable employee of Prime Towing. He has also been entrusted with company cash and has shown himself to be trustworthy.
- Mr. Navarchi needs a tow truck driver's licence for the City of Toronto so that he can earn additional money and be able to cover all his expenses. If he is unable to earn additional money, he faces the risk of not being able to pay his rent and possibly becoming homeless.
- The Tribunal should focus on the fact that Mr. Navarchi has proven to be governable as an employee of Prime Towing, that in working for Prime Towing he is always monitored and because Prime Towing operates tow trucks in Toronto, he can earn more money by towing for them in Toronto.
- The Tribunal should place emphasis on the need for rehabilitation and the fact that Mr. Navarchi has rehabilitated himself after a long, troubled and difficult past.

DECISION

11. On the basis of the facts and the law as set out in these reasons and taking into account the mandate of the Tribunal to protect the public interest, the Tribunal

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decided, at this time, to deny Mr. Navarchi's application for a Tow Truck Driver's Licence in the City of Toronto.

12. The Tribunal concluded that Mr. Navarchi's longstanding history and pattern of serious criminal offences and non-compliance with the law, and in particular, his convictions for drug-related offences and the severe penalties he faced for these offences, compelled the Tribunal to place greater emphasis on the need to protect the public interest by not granting a tow truck driver's licence at this time. This was especially so considering that the Tribunal was presented with evidence of serious criminal wrongdoing including, for example, convictions for serious drug and firearms-related offences and significant periods of incarceration for these various convictions.
13. The Tribunal noted that Mr. Navarchi appears to be on the path to getting on with his life, putting his past behind him and being a law abiding citizen. However, the Tribunal concluded that not enough time has elapsed since his longstanding history of serious criminal offences and resulting convictions and that his period of parole only concluded in May of 2017. Further, the Tribunal observed that he had only been employed full-time with his current employer since December of 2016. The Tribunal determined therefore that more time is required for Mr. Navarchi to be able to clearly and convincingly demonstrate that he has dealt with his past and that he is able to conduct himself in accordance with the law and with honesty and integrity.
14. The Tribunal also concluded that Mr. Navarchi is currently able to earn a livelihood as a full-time tow truck driver in Durham and that while he has monthly expenses that have to be paid, some of the expenses that he incurs every month seem to be on the high side and, in any event, it appears that Mr. Navarchi is able to make ends meet. The Tribunal was therefore not convinced that Mr. Navarchi will not be able to earn a livelihood if his application for a tow truck driver's licence is denied at this time.
15. In rendering its decision, the Tribunal remarked that should, in the future, Mr. Navarchi decide to make an application for a Tow Truck Driver's Licence in the City of Toronto, he would be well advised to continue on his current path of compliance with the law and to come before the Tribunal with a record which serves to clearly establish that he has, over a longer period of time, conducted himself with honesty and integrity and in accordance with the law, and that he has effectively put his past behind him.
16. The Tribunal indicated that the passage of time would be to the benefit of Mr. Navarchi and, in particular, that it would give him the opportunity, through his deeds and conduct, to demonstrate to the Tribunal and MLS that he is able to abide by the law, and that sufficient time has elapsed since his longstanding history of serious criminal conduct and therefore, that the public interest grounds for the denial of his Tow Truck Driver's licence application as set out above are no longer as relevant as they were to the Tribunal in considering his application for a tow truck driver's licence made on November 18, 2011.]

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Originally Signed

Aly N. Alibhai, Chair
Panel Members, Melina Lavery and Keith Cooper concurring

[Reference: Minute No. 208/17]

Date Signed: August 17, 2017