

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

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**Date of**

**Hearing:** Thursday, September 24, 2015

**Panel:** (Hedy) Anna Walsh, Chair; Lori Marzinotto and Richard Quan, Members

**Re:** Ahilakumaran Poopalasingham  
Applicant for a Limousine Driver's Licence (Application No. B535940)

**Counsel for Municipal Licensing and Standards:** Ms. Lauren Elliott

### **INTRODUCTION**

The Applicant requested a hearing before the Toronto Licensing Tribunal (TLT) to determine whether a Limousine Driver's Licence should be issued, have conditions imposed upon it or be denied. The Applicant was denied a Taxicab Driver's Licence three times in the past: for failing the program, failing to attend the program and for being removed from the program following an incident on July 22, 2013.

On July 22, 2013, Municipal Licensing and Standards (MLS) staff received a complaint alleging that the Applicant was being loud, disrespectful and disruptive during a Geography class, as part of the Taxicab training program.

On April 30, 2015, a notice of licence non-recommendation was sent to the Applicant from the Manager Licensing Services outlining grounds for licence refusal. There was a clerical error. The letter refers to a Tow Truck Driver's Application No. B535940 that should have referred instead, to a Limousine Driver's License.

After hearing the evidence submitted by the City and by the Applicant, as well as the submissions of both parties, TLT ordered that a Limousine Drivers Licence, should not be issued for reasons as set out hereafter.

### **CITY'S EVIDENCE**

The City called three witnesses to testify on its behalf.

1. Mr. Terry Van Elswyk was duly sworn, identified himself as Supervisor of Licensing Services with (MLS). He testified that Report No. 6403, dated July 9, 2015 had been created by MLS staff that he had reviewed it and could attest to its contents. The report was entered into the record as Exhibit #1.

Mr. Terry Van Elswyk referred to the following portions of Report No. 6403:

Page 17, a Notice of License Non-Recommendation from the Manager Licensing Services for a Limousine Driver's License, dated April 30, 2015, under Section 545-4C,

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outlining the City's concerns that the Applicant would infringe on other members of the public, or endanger the health and safety of other members of the public.

Pages 20-21, a Driver's Abstract, dated May 23, 2015 of the Applicant's licence to drive from 2011-2014 in the Province of Ontario, with nine convictions under the *Highway Traffic Act*, including driving with no driver's licence, improper class of licence and driving with suspended licence.

Pages 23-60, an updated records of The Ministry of the Attorney General's Integrated Court Offences Network (ICON ) report, dated April 10, 2013, prepared by MLS staff, with a chart revealing nine *Highway Traffic Act* convictions, unrelated to the operation of a commercial vehicle and no unpaid fines.

Page 61, a summary of pages 23-60, of the Attorney General's Integrated Court Offences Network (ICON) report dated April 10, 2013, prepared by MLS staff.

Pages 4-14, Appendices 1-7, an incident report dated July 22, 2013, in regards to the Applicant's behaviour during the geography class alleging that he was loud, disrespectful and disruptive, a letter from the Coordinator of the Training Unit, dated August 1, 2013 confirming the Applicant's confrontational behaviour, a letter from Mr. Richard Mucha, former Acting Director, Licensing Services, dated August 2, 2013, of an interview with the Applicant, the Notice of Licence Non-Recommendation from the Manager Licensing Services for a Limousine Drivers' Licence, dated April 30, 2015, as a result of concerns for the public's safety and a request for refund of the training course by the Applicant, dated August 29, 2013.

The Applicant declined to cross-examine Mr. Terry Van Elswyk. He acknowledged the evidence adduced by the City and took exception to the time of the alleged incident on July 22, 2013.

2. Ms. Jasmine Zambri testified on behalf of the City after being sworn. She identified herself as Training & Development Specialist, Training Center. She identified the following portions of the report:

Page 6, a summary report of the alleged incident, dated July 22, 2013, in regards to the Applicant's behaviour during the geography class, in which he allegedly became disruptive and confrontational, necessitating in the need for assistance from the Coordinator of the Training Unit. She reports that the Applicant arrived late to class and approached the podium before break time and questioned her knowledge of the city streets and that she replied that she knew some, and that he raised his voice and said that he wanted "a yes or no answer". She reports that she tried to explain to him that as a result of arriving late, that he missed the introduction that covered the reasons for this type of instruction. She reports that he then raised his voice and said that "the curriculum is irrelevant, drivers use GPS now. You act like you know everything". At this point, a few other students gathered around and asked the Applicant to calm down. One student placed his hand on the Applicant's arm and he turned around and yelled for the student not to touch him. She reports that she reminded him of the Code of Conduct at the training centre and that he cut her off and accused her of not letting him speak. She reports that she asked him to come back to the office to speak to management and that he stormed out of the room and that a few minutes later the supervisor arrived and that

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the Applicant began talking loudly, very animated, with aggressive body language and asked where the cameras were. She reports that the supervisor Mr. Greg Roy then asked him to step out of the classroom and escorted him to the office.

Page 62, a copy of the Student Code of Conduct. She reports that the Applicant failed to follow the Code, which was posted in the classroom, as well as included in the course material. She describes that she and the students felt uncomfortable in his presence, as he was animated, loud and very confrontational and that this kind of behaviour was very uncommon in the classroom.

The Applicant declined to cross-examine Ms. Jasmine Zambri.

3. Mr. Greg Roy testified on behalf of the City after being sworn. He identified himself as Coordinator, Training & Development, Training Centre.

He identified the following portions of the report:

Pages 7-8, a report of the alleged incident dated July 22, 2013, in regards to the Applicant's behaviour during the geography class. Mr. Greg Roy testified that at approximately 10:30 a.m. Ms. Jasmine Zambri came into his office and asked him to assist with a disruptive student. He reports witnessing the Applicant standing and waving his arms and hearing him ranting and raving. He reports witnessing the Applicant shuffling papers and disrupting things on the desk. He claims that when he asked him to step out into the hallway to speak to him, his reply was unclear and that he was behaving animatedly and kept asking where the cameras were and repeatedly stated that he was a Canadian citizen. He reported that the Applicant uttered things that were irrelevant, that he became increasingly more upset, that he then threw his binder onto the table and was at that point advised to leave and take his binder with him. He reports that the Applicant agreed to leave, but promised to return back the next day. When advised not to return, he repeated in a very aggressive and threatening tone that he would return, necessitating for security to be called to escort him out of the building. He reports that moments later he received a phone call from the Applicant, asking him if he knew who he was and that "he proceeded to say things that were very unclear". He describes his behavior as being "irrational, abusive, confrontational and threatening". He reports that students in the classroom reported feeling threatened and expressed concern that there was something wrong with the Applicant's behaviour and that they were worried if he were to be allowed to return.

Page 11, a letter dated July 22, 2013 advising the Applicant that he can no longer continue in the program due to his "disruptive, irrational, uncooperative and confrontational behaviour."

Page 12, a letter dated August 1, 2013, to the Applicant and placed in his file of his non-recommendation for a taxi licence, as a result of the alleged incident on July 22, 2013.

Page 19, a letter to the Applicant, dated June 5, 2015 denying his limousine licence application and refusal into the MLS training Limousine Drivers Course scheduled to commence on June 15, 2015.

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He reports concerns for the safety of staff and students. He claims that the Limousine Driver's course is a 4 day program, with an emphasis on customer service, defensive driving, dealing with disabled customers, as well as training in geography, and planning routes. He reports that taxi drivers must be courteous, professional, understanding, and patient and that limousine drivers are expected to be even more courteous, professional and knowledgeable, as well as capable of operating a limousine safely. He reports that the Applicant would not be well suited for this type of work.

Page 62, a copy of the Student Code of Conduct, included in all course material and posted in the classroom. He reports that students are reminded at the beginning of class to abide by these rules and are asked to leave if noncompliant and that the Applicant was in breach of almost every rule and as a result was asked to leave.

Page 63, a copy of the City of Toronto's Human Resources Policy-Workplace Violence report filed on July 22, 2013, outlining his alleged non-compliant, irrational and confrontational behaviour.

Page 9, a Workplace Violence and Threat Report, dated July 22, 2013 in which the Applicant was threatening and confrontational.

He reports being a Supervisor for four and a half years and experienced with this kind of student behaviour and reports that the Applicant would not be suitable for the Limousine Industry that his conduct would infringe on the rights and safety of the public. He reports having concerns as well for the safety of staff and students if he were permitted to return to the training center.

He reports that all classroom instruction and course material are provided in English and that students must have a strong command of the English language in order to qualify. He reports that all conversations with the Applicant were in English and that the Applicant displayed no difficulty communicating in English.

The Applicant declined to cross-examine Mr. Greg Roy.

## **APPLICANT'S EVIDENCE**

The Applicant appeared on his own behalf, without legal representation, was duly sworn and testified to the contents of the report. He was assisted by an interpreter Ms. Thresha Gnanakunaseelan, a Tamil Interpreter who was sworn.

He acknowledges his past convictions and reports that the alleged incident occurred on July 22, 2013, but claims that it occurred during break time and not during class time. He does not, however dispute that other students were present at the time, including one student who placed his hand on his arm, whom he asked not to touch him.

He claims to have asked the instructor whether she knew Toronto very well and asked her to recite the streets. He claims that the supervisor asked him to leave the class and told him that he could not take his binder and that he was escorted off the premises, by two security guards.

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He referred to:

Page 13, a letter requesting his attendance for a meeting with Mr. Richard Mucha, Acting Director Licensing Services with the City Municipal Licensing and Standards (MLS) dated August 2, 2013.

He reports requesting a limousine licence.

Page 14, a letter written by the Applicant dated August 29, 2013 confirming knowledge of his inability to attend the training program, as a result of the alleged incident on July 22, 2013.

He claims to have attended all appointments and that he wasn't swinging his hands on July 22, 2013.

In cross-examination, counsel for the City referred to the following portions:

Page 21, a copy of the Applicant's *Highway Traffic Act* charges and convictions, dated May 23, 2015. The Applicant confirmed the accuracy of the charges and convictions and admitted to failing to surrender his licence on March 21, 2012, but claimed that it was merely an oversight. He acknowledged his conviction on July 9, 2012 for driving a motor vehicle with no licence and being fined \$297, as well as having his licence suspended on March 15, 2013, for driving without a licence. He admitted to not having a driver's licence in 2012 and 2013, but claimed that he was currently a licensed driver.

He admits to applying three times in the past for a taxi licence and to being unable to obtain a licence, due to failing, failing to attend and being removed from the training course.

He claims to know the city streets and not to see the value of geography training sessions. He claims that this training is "a waste of time and money. All the other drivers use the navigator. Customers don't have time to wait for that."

Page 62, a copy of the Student Code of Conduct. He claims not to have known about the City's Student Code of Conduct for training, nor that breaching the code would result in his removal from the program. He reports that his voice is always loud, that he did not raise his voice in class, that his conduct was not threatening, that he did not disrupt the classroom environment, since the incident occurred during break time.

He claims not to know why the student touched him and denies having any anger management issues. He admits to being asked not to return to the training center and to calling Mr. Roy after being escorted out by two security guards.

Page 13, a letter requesting him to meet with Mr. Richard Mucha Acting Director Licensing Services with the City Municipal Licensing and Standards (MLS) dated August 2, 2013. He admits to not attending on August 2, 2013, and meeting with him instead on August 29, 2013.

He reports that his driver's licence was suspended in 2010 for unpaid fines.

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He reports living with his parents. His mother is 60, his father is 65 and that he has one brother who is married and not living at home.

He claims to have failed the taxi driving course exam, because he did not know the answers to the geography questions.

He claims to have a job working 35-40 hours a week as a cook at a pizzeria and has worked there for five years. He claims he would give 2 weeks' notice to leave if granted a limousine licence.

He did not call any witnesses to testify on his behalf.

## **CITY'S SUBMISSIONS**

In her closing submission, counsel for the City expressed the view that there were reasonable grounds to believe that the Applicant had not complied with the law and was a danger to the public. It was the City's submission that he would not meet the standards as set out by the Municipal Code and that a licence should thereby not be granted, to uphold public safety.

## **APPLICANT'S SUBMISSIONS**

The Applicant claims to love driving and has been driving since he was very young. He claims to provide good customer service to customers at the pizzeria and would be successful as a limousine driver.

## **DECISION**

The rules governing limousine drivers exist for a reason; to protect the safety of the public and to ensure that activities are performed with integrity and honesty. Although the Applicant reported that the alleged incident occurred during break time, rather than during class time, there was nevertheless compelling evidence to the contrary. The complaints of his disobedience and confrontational behavior were corroborated by all three of the City's witnesses. They referred to his inappropriate and aggressive behaviour that made them feel "uncomfortable". Also noted is his inability to secure a taxi licence in the past, as a result of failing the mandatory training program, failing to attend the program and being removed from the program. He has also had several convictions under the *Highway Traffic Act* that include driving with no driver's licence, driving with an improper class of licence and driving while under suspension.

His disregard for rules was deemed as problematic and even observed during the course of this hearing. Despite direction at the outset to refrain from using mobile devices in the courtroom, he was observed to be repeatedly opening and checking his cell phone.

The nature of the reported incident on July 22, 2013 poses a concern to the Tribunal, in that his threatening behavior caused supervisory staff to feel "uncomfortable". As well,

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the record of *Highway Traffic Act* convictions also provide reasonable grounds to believe that he has not complied with the law in the past, and will not comply with the law in the future. His violations of driving while his licence was suspended, his conduct during the training program, as well as his conduct during the hearing provide reasonable grounds to believe that his operation of a limousine would constitute a danger to other members of the public.

In addition to compelling evidence that the Applicant did not comply with the law in the past, he did not appear to acknowledge his wrongdoings, or appear to be remorseful, or promise to comply with the law in the future.

The TLT, in its deliberations also considered the applicant's need to make a livelihood.

Chapter 545-3B (3), subsection (c) requires the TLT to balance the protection of the public interest with the need for licencees to earn a living.

The Applicant revealed during his testimony that he has other means of support, that he has been working for over 5 years as a full-time cook in a pizzeria and was still employed in that capacity.

The above evidence, supporting the applicant's disobedience and disregard for the law is very convincing and compelling to provide reasonable grounds to believe that he has not carried on or will not carry on his business of driving a limousine with integrity and honesty. We therefore take the City's position that a licence should not be granted. Based on the totality of all of the circumstances as outlined above, the Tribunal orders to deny the Applicant's request for a limousine licence, in order to protect the health and safety of the public, in accordance with Section 545-4C(1), subsections (a), (b) and (e) of the Municipal Code.

Originally Signed  
(Hedy) Anna Walsh, Chair  
Panel Members, Lori Marzinotto and Richard Quan concurring

*[Reference: Minute No. 145/15]*

**Date Signed:** October 8<sup>th</sup>, 2015