

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: September 28, 2017

Panel: Melina Laverty, Chair; Aly N. Alibhai and Daphne Simon, Members

Re: Arafat Bakshi (Report No. 6571)
Applicant for Renewal of Vehicle-for-Hire Driver's Licence No. D01-4295124

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

Paralegal for Applicant: Mr. Robert Stewart

Sylheti Interpreter: Mr. Khan Chowdhury

INTRODUCTION

SUMMARY

In October 2016, Toronto's Municipal Licensing and Standards Division (MLS) did not renew Mr. Bakshi's Vehicle-for-Hire Driver's Licence, after Mr. Bakshi was criminally convicted of sexual assault in November 2015. Mr. Bakshi, therefore, requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine if his Licence should be renewed, have conditions placed on it, or be revoked. After hearing the evidence and submissions of the parties, the Tribunal decided to renew Mr. Bakshi's Vehicle-for-Hire Driver's Licence and imposed a probationary period and other conditions as detailed below, and for the reasons as set out hereafter.

INTRODUCTION

1. In August 2012, MLS issued a Taxicab/Vehicle-for-Hire Driver's Licence to Mr. Arafat Bakshi ("Mr. Bakshi").
2. On February 20, 2014, Toronto Court Services informed MLS that Mr. Bakshi had been charged with sexual assault (section 271 under the Criminal Code) following an incident on December 14, 2012. At the time of Mr. Bakshi's release, conditions were imposed on him with respect to transporting female passengers in a taxi cab.
3. On May 5, 2014, the Toronto Police Services provided information to MLS with respect to the charge of sexual assault against Mr. Bakshi.
4. On November 27, 2015, Mr. Bakshi was convicted of sexual assault. On January 19, 2016, Mr. Bakshi appealed his conviction.
5. On October 11, 2016, MLS sent Mr. Bakshi a letter outlining the reasons why his licence would not be renewed.

September 28, 2017

6. On November 8, 2016, Mr. Bakshi requested a hearing before the Tribunal.
7. On February 13, 2017, the Ontario Superior Court of Justice heard Mr. Bakshi's appeal of his criminal conviction, and two days later issued its decision, denying the appeal, and upholding the conviction of sexual assault.
8. On March 16, 2017, the Tribunal imposed an interim condition on Mr. Bakshi's licence that no single or individual female passenger would be permitted in the front seat while Mr. Bakshi is driving a taxi. Mr. Bakshi's taxi licence also carried an endorsement setting out this restriction.

ISSUE

9. The issue before the Tribunal was whether Mr. Bakshi's conduct (including charges and convictions under the Criminal Code [CC], the Highway Traffic Act [HTA], and the Municipal Code) provide reasonable grounds to believe that Mr. Bakshi will not operate a taxicab in accordance with the law, and with honesty and integrity; that his carrying on of the operation of a taxicab will result in a breach of the law; or that his operation of a taxicab would infringe or endanger public health and safety.

AGREED STATEMENT OF FACTS

The parties agreed that MLS Report No. 6571, dated November 15, 2016 and signed by Ms Olga Kuztelska (MLS Supervisor), excluding pages 10 and 11, and including three updates from May, June and July 2017, as well as a certificate showing that Mr. Bakshi had completed a "Sexual Offending Relapse Prevention Program" (10 sessions held between June and August 2016), constituted an "Agreed Statement of Facts," and hereafter is referred to as "the report."

As a result, Mr. Cornett did not call any witnesses.

APPLICANT'S EVIDENCE

Mr. Stewart called one witness, Mr. Bakshi, who provided testimony via an interpreter. Mr. Bakshi was affirmed and testified as follows:

10. He is 31 years old and came to Canada in 2004 from Sylhet, Bangladesh. He completed "General Studies" in College before coming to Canada.
11. He is married with four children: an eight-and-a-half-year-old son, a twenty-three month-old son, and twins that are five months old (a boy and a girl). His wife is not working and they both currently care for the children. He supports the family and has done so by driving a taxi for the last four and a half years. Driving a taxi enables him to have flexible hours so he can help his wife care for the family. His wife is ill; she has asthma, high blood pressure and high blood sugar. She required surgery to deliver the twins and got an infection after the surgery. The infection recurs.

September 28, 2017

12. Before driving a taxi, he worked in a restaurant.
13. He was charged with sexual assault and found guilty after a trial. He filed an appeal because although the complainant said he touched her, he said that he did not touch her and no touching could be seen on the footage of the camera in the taxi at the time of the incident. He lost the appeal as his lawyer did not submit a full transcript of the trial. He considered appealing that decision but could not afford to do so.
14. Mr. Bakshi explained that the certificate on the last page of the report was given to him, after he completed classes about how to behave, the conditions imposed on him and how to comply with them. The certificate indicates that Mr. Bakshi completed ten (10) sessions of the "Sexual Offending Relapse Prevention Program" between June and August 2016.
15. Since he was charged with sexual assault, he has continued to drive a taxi, but does not have any female passengers sit in the front seat of his taxi. He has not had any difficulty following this condition. If a woman tries to get into the front seat, he explains that she needs to sit in the back, and if she prefers to sit in the front, he indicates that he can flag another taxi for her. He has never had any issues with this, and when this has occurred, the passengers have appreciated his honesty.
16. He has never been charged with, or convicted of, any other criminal offence.
17. He does not own a taxicab, but the owner of the fleet knows about his conviction of sexual assault. He does not use the same fleet as when he was originally charged back in 2012, but the owners of the garages from which he rents a taxi, both before and now, are aware of his conviction.
18. He is not proud of what happened. Only his wife and close friends are aware of it. He received a suspended sentence, three-years' probation, a \$50 fine, a five-year criminal record, and he is also subject to a SOIRA (Sex Offender Information Registration Act) order for ten years. The latter requires him to report information (such as his home and work address) once a year. Under his probation order, he reports bi-weekly.
19. He currently drives the day shift to be able to assist his wife with the children. His twins have been unwell; last night, his son had a fever and he needs to be home to help his wife. He would be willing to have a restriction such that he only drives a taxi during daylight hours.
20. He is involved with the Sylheti community in Toronto. He was elected by his community to be the Assistant Organizing Secretary. This community organization is involved in different activities, such as fundraising (e.g., disaster relief in Fort McMurray after the fires) and currently they are sending assistance for the Rohingya Muslims, and organizing a blood donor clinic.

September 28, 2017

21. His conviction has led to immigration issues. He currently has a reporting requirement for the next two years, and should another complaint arise, he may be deported. When he reports to Immigration, he shows them that he supports his family with his employment and his mortgage payments, among other things.
22. He is willing to follow any conditions that the Tribunal wishes to place on his licence should it be willing to allow him to continue to drive a taxi.

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

23. When he first came to Canada, he did work in a restaurant washing dishes and doing kitchen preparation work. He normally worked 60 to 70 hours a week during the lunch and dinner shifts. At that time, his situation was different, he only had one child and his wife was healthy. It was difficult for him to make enough money with one job in a restaurant, and so he often worked two jobs.
24. His conditions of probation include that he stay away from the complainant. He reports to his probation officer every two weeks and must tell them where he is working and if he has any trouble with the law. If he misses a meeting, he could be sent to prison for four years.

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

25. He bought a house about two and a half years ago, and is making mortgage payments.

Mr. Stewart did not call any other witnesses.

CITY'S SUBMISSIONS

In his closing submissions, Mr. Cornett, on behalf of MLS, submitted that Mr. Bakshi's Vehicle-for-Hire Driver Licence should be revoked. In particular, he submitted that:

26. The MLS is very concerned about Mr. Bakshi's conviction for sexual assault. Mr. Bakshi was first licensed to drive a taxi in August 2012 and the offence occurred in December 2012 in a taxi. He was convicted in November 2015, and though he appealed this conviction, he was unsuccessful.
27. In his February 2017 judgment, Superior Court Justice Goldstein sets out the facts leading to the conviction.¹ Mr. Cornett read these two paragraphs into the record, which describe Mr. Bakshi touching the victim, without consent, while in the front seat of the taxicab.
28. The appeal was about credibility and these are the facts that were accepted by the trial judge. In MLS's view, since Mr. Bakshi was convicted of committing a

¹ *R. v. Bakshi*, 2017 ONSC 1083 (CanLII) at para. 1-2, <<http://canlii.ca/t/gxjxg>>, retrieved on 2017-10-07

September 28, 2017

sexual assault while driving a taxi, that alone constitutes grounds to revoke his licence.

29. MLS recognizes that Mr. Stewart might argue that the offence occurred in 2012 and a significant period of time has passed without an incident since the offence, but MLS reminds the Tribunal that during that period of time Mr. Bakshi had a condition of either no female passengers in his taxi initially imposed when he was released, or an interim condition on his licence imposed by the Tribunal in March 2017 that he not have a female passenger in the front seat of his taxi. As such, while time has elapsed since the offence in 2012, during that period of time Mr. Bakshi's conditions effectively prevented the recurrence of a sexual assault.
30. While Mr. Bakshi did not receive jail time, he was convicted of sexual assault, and received a suspended sentence, and a 10-year SOIRA order was put in place.
31. Though Mr. Bakshi's personal circumstances are difficult, he has worked in the restaurant industry and though not ideal, he could earn a livelihood by other means than driving a taxi.
32. The conviction is too serious and in MLS's view, conditions are not appropriate in this case, and there are no livelihood issues that outweigh the serious nature of the offence.

APPLICANT'S SUBMISSIONS

Mr. Stewart submitted that:

33. He wished to correct the record in that the bail conditions on pages 12 and 13 of the report, which show that there were to be no female passengers in his taxi, were changed so that Mr. Bakshi could have female passengers as long as they were not in the front seat. Mr. Bakshi has complied with any conditions that have been placed on his licence since being charged in 2012.
34. With any criminal conviction, there are gradations; the facts that lead to a particular conviction are not all of the same seriousness. It is unreasonable to have a "zero tolerance" policy and assume that all convictions for "sexual assault" should be treated in the same way, and this is recognized in the criminal justice system at the sentencing stage. It would be unreasonable if any sexual assault, regardless of the particular facts, led to revocation of a licence.
35. Not to make light of sexual assault, but the facts ("unwanted touching without consent") in this case are at the lower end of the scale for the offence of sexual assault. This is also reflected in the sentence that Mr. Bakshi received, which included a suspended sentence, a \$50 fine, and a three-year period of probation. Mr. Bakshi has always complied with any conditions placed on his licence. Any of the other charges or convictions (under the Highway Traffic Act or bylaw) against Mr. Bakshi are minor in nature.
36. There is some indication that the complainant's memory was somewhat faulty, as set out by Justice Goldstein, and pointed out by Mr. Inoue, counsel to Mr. Bakshi

September 28, 2017

on the appeal.² There were issues with the complainant's evidence with respect to her previous contact with the police, and that she did not recall moving from the back to the front seat of the taxi until being confronted with photographs.

37. The Tribunal has heard evidence that Mr. Bakshi has learned from what happened. He is willing to drive under conditions, including that he only drive during the day, which would reduce any perceived risk to the public of a recurrence.

DECISION

38. In considering whether to renew, grant or deny a licence, and whether to do so with or without conditions, the Tribunal must balance the protection of the public interest with the need of the applicant to earn a living.
39. Section 546-4 of the Toronto Municipal Code sets out the reasons for denying to renew 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.
40. Having weighed the evidence, the Tribunal is not satisfied that MLS has shown that there are reasonable grounds to revoke Mr. Bakshi's Vehicle-for-Hire Driver Licence.
41. The Tribunal is always concerned with a charge or conviction of sexual assault by a taxi driver, particularly when the victim is a passenger. However, in this case, the Tribunal is satisfied that strict conditions on Mr. Bakshi's Vehicle-for-Hire Driver Licence will serve to adequately protect the public.
42. The Tribunal noted that the facts leading to the Mr. Bakshi's conviction, as described by Justice Goldstein in the Ontario Superior Court decision, along with Mr. Bakshi's sentence (that is, a suspended sentence with a three-year probationary period, a \$50 fine, and a SOIRA order), indicate that the sexual assault was on the lower end of the spectrum for this offence.

² *R. v. Bakshi*, 2017 ONSC 1083 (CanLII) at para. 8-9, <<http://canlii.ca/t/gxjxg>>, retrieved on 2017-10-07

September 28, 2017

43. The Tribunal finds that several factors weigh in Mr. Bakshi's favour. The offence occurred nearly five years ago, and since that time, Mr. Bakshi has abided by the conditions on his licence, either imposed as a bail condition, or by the Tribunal on March 16, 2017.
44. Furthermore, Mr. Bakshi has no history of prior charges or convictions under the Criminal Code of any kind, including of a sexual nature.
45. Aside from the conviction for sexual assault in 2015, Mr. Bakshi only has a few minor convictions under the Highway Traffic Act in 2012 and 2014, and one conviction under the municipal bylaw in 2014. None of these were raised by MLS in its submissions as being of concern, and the Tribunal also found that these are of a minor nature and therefore, they did not elevate our concern about Mr. Bakshi's ability to operate a taxicab in accordance with the law.
46. 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, Mr. Bakshi's need to earn a living.
47. For the last four and a half years, Mr. Bakshi has been supporting himself and his dependents by driving a taxi. Mr. Bakshi currently has four young children and a spouse who depend on him for support. He testified that his spouse has been unwell since the birth of the twins, and that he helps care for his children. Since coming to Canada, the only other job Mr. Bakshi has held was as a dishwasher or doing kitchen preparation work in restaurants. These are poorly paid positions and are frequently only offered on a part-time basis. Mr. Bakshi himself indicated that he had to work multiple jobs to make ends meet when working in restaurants, and at that time he only had one child and a spouse to support. In the Tribunal's view, Mr. Bakshi's need to earn a livelihood provides additional reasons in favour of renewing his licence.
48. Despite Mr. Bakshi's clear livelihood needs, the fact that Mr. Bakshi received a suspended sentence, and that the offence occurred nearly five years ago without any further incidents, the Tribunal remained concerned that Mr. Bakshi was convicted of a sexual assault that occurred while operating a taxi. As such, the Tribunal felt it necessary to impose conditions on Mr. Bakshi's licence in order to continue to protect the public.
49. The Tribunal was satisfied that renewing Mr. Bakshi's licence with a probationary period of four years and restrictions, including that he not have female passengers in the front seat of his taxi and that he only operate a taxi between 6:00 am and 8:00 pm, would adequately protect the public. The Tribunal also decided to suspend Mr. Bakshi's licence for seven days to impress upon him our concern with the nature of his conviction. Should Mr. Bakshi incur any new charges or convictions, MLS may bring back those matters and Report 6571 to the Tribunal for a full hearing.

For the reasons set out above:

September 28, 2017

Mr. Bakshi's Vehicle-for-Hire driver's licence will be renewed, effective immediately, with the following conditions:

- (1) 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, and will be suspended for seven (7) days;
- (2) No female passenger is permitted in the front seat while Mr. Bakshi operates his taxi;
- (3) Mr. Bakshi may only operate his taxi between the hours of 6:00 am and 8:00 pm;
- (4) Prior to each of the next four (4) renewals of his licence, Mr. Bakshi must provide to MLS, at his own expense, an original updated abstract of his criminal record; and

During the probationary period, if MLS has concerns with any new charges or convictions, those matters and Report No. 6571, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Melina Laverty, Chair

Panel Members: Aly N. Alibhai and Daphne Simon concurring

Reference: Minute No. 268/17

Date Signed: October 19, 2017