

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: November 9, 2017

Panel: Moira Calderwood, Aly N. Alibhai and (Hedy) Anna Walsh, Members

Re: Linosan Packiyathan (Report No. 6824)
Applicant for the Renewal of Tow Truck Driver's Licence No. D09-4653021

Counsel for Municipal Licensing and Standards: Ms Penelope Ma

INTRODUCTION AND ISSUE

In July 2016, Mr. Packiyathan applied to Municipal Licensing and Standards (MLS) for a Tow Truck Driver's Licence. As part of that application, Mr. Packiyathan submitted a provincial Driver's Record Abstract, dated June 30, 2016. MLS issued Mr. Packiyathan a Tow Truck Driver's Licence D-09-4563021 in July 2016.

As part of enforcement activities, MLS subsequently obtained Mr. Packiyathan's three-year driver's record directly from the Ministry of Transportation's database. The information in this record differed significantly from that in the record Mr. Packiyathan had submitted in July 2016. The record which MLS obtained contained information about convictions and suspensions that predated July 2016, yet were not contained in the record which Mr. Packiyathan had submitted in July 2016.

Mr. Packiyathan paid the annual renewal fee to renew the licence in July 2017; the licence is currently valid. In August 2017, MLS advised Mr. Packiyathan that it would not renew his Tow Truck Driver's Licence for the coming year. Mr. Packiyathan sought a review of that decision, and the Toronto Licensing Tribunal held a hearing on this matter on November 9, 2017. After the hearing, the Tribunal delivered an oral decision denying the renewal of Mr. Packiyathan's Tow Truck Driver's licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Packiyathan's Tow Truck Driver's licence should be renewed, given his driving record, his record of convictions under other statutes, and events that occurred when he attended to obtain the licence in July 2016.

EVIDENCE

Ms Olga Kuztelska, MLS Supervisor, testified on behalf of MLS. Ms Kuztelska and her staff prepared MLS Report No. 6824, which has 106 pages. The report relates to Mr. Packiyathan's MLS history and his application for the Tow Truck Driver's Licence. The Tribunal admitted the report in the hearing, and marked it as Exhibit 1. MLS submitted a further package of documents, with updating information about Mr.

November 9, 2017

Packiyathan's charges and convictions, and driving record. The Tribunal marked this material as Exhibit 2.

Through Ms Kuztelska, Ms Ma drew the Tribunal's attention to the following:

- The three year driver's search document which Mr. Packiyathan submitted to MLS in July 2016 (Exhibit 1, page 10) documented one conviction, for failing to obey lane lights, from April 2016. This document showed zero demerit points.
- The three year driver's abstract which MLS obtained from the Ministry of Transportation's database, also dated June 30, 2016 (Exhibit 1, pages 14-15) had a notation that a mandatory ignition interlock was required. This abstract showed two demerit points and several convictions. The convictions included:
 - A conviction for disobey legal sign, offence date November 14, 2012
 - A conviction for speeding 109 KPH in an 80 KPH zone, offence date November 16, 2013
 - A Criminal Code conviction for driving with more than 80 mg of alcohol in the blood, offence date July 7, 2014
 - An administrative driver's licence suspension (ADLS) from July 7 to October 5, 2014
 - A conviction for speeding 65 KPH in a 50 KPH zone, offence date October 29, 2014
 - A conviction for unsafe move, offence date November 29, 2014
 - A driver's licence suspension from October 22, 2015 to May 16, 2016, due to the Criminal Code conviction.
- In addition to the above convictions, Ms Kuztelska noted documentation in Exhibit 1 showing:
 - Charges laid under the Highway Traffic Act on April 19, 2017, of insecure load, improper means of attachment and drive trailer with defects, all related to a tow truck
 - Convictions on charges laid on July 4, 2015, of fail to surrender permit, colour coating obscuring interior and disobey sign, again, related to a tow truck
 - A seat-belt related conviction from 2011.
- Exhibit 2 contained information updating Mr. Packiyathan's record of charges and convictions, including:
 - Charges laid on August 29, 2017, of operating a commercial vehicle with no valid Commercial Vehicle Operator's Registration (CVOR) and of overweight vehicle, related to a tow truck. These charges are currently before the courts.
 - A charge under the Toronto Municipal Code from April 2017 of drive unequipped tow truck. This charge is still before the courts.
 - Charges under the Toronto Municipal Code laid on November 1, 2016, related to driving an unequipped tow truck, operating a tow truck not free of mechanical defects, and tow truck lighting and audible signal issues,

November 9, 2017

- when operating the truck in reverse. These charges are still before the Courts.
 - Charges laid in July 2017 under a Markham by-law related to tow truck infractions. These charges are still before the courts.
- Exhibit 1 also contained information about Mr. Packiyathan's convictions under other statutes. These included:
 - Three convictions (October 2015, April 2014, July 2012) under the Liquor Licence Act for "Liquor Illegal Place"
 - A conviction under the Compulsory Automobile Insurance Act for fail to have insurance card, offence date July 4, 2015
 - A conviction under the Forest Fires Prevention Act for "start fire in a place other than stove or installation," offence date July 13, 2012
 - A conviction under the Trespass to Property Act for "Engage in Prohibited Activity," offence date July 18, 2012.
- Exhibit 2 contained an updated Driver Record abstract, dated November 8, 2017. In addition to charges and convictions already noted, it showed a conviction on the disobey legal sign charge laid on July 4, 2015.
- Ms Kuztelska noted that the fine of \$1,560 levied upon the 2014 over 80 conviction remains unpaid.

Mr. Packiyathan did not cross-examine Ms Kuztelska, and her evidence was therefore unchallenged.

Mr. Packiyathan appeared on his own behalf, without legal representation, and was affirmed. The Tribunal advised him of his right to have legal representation and he chose to proceed without such representation.

Mr. Packiyathan's testimony included the following information:

- He moved to Canada in 2009. He worked with a towing company in Markham. Its tow trucks were not in good condition. He incurred some charges while driving tow trucks for this company, for example, charges related to the lights not working properly. While his driver's licence was suspended, he worked inside the garage for this company.
- Mr. Packiyathan provided some details regarding the Liquor Licence Act offences, suggesting that some happened when he was a younger man, in high school. He said the charge under the Forest Fires Prevention Act also related to high school activity.
- With respect to the July 2014 activity leading to the over 80 charge, Mr. Packiyathan stated that he drove a car (not a tow truck) back from Alberta. He went to a friend's house in Ajax and they had some drinks. He then drove to a nearby gas station and got pulled over.

November 9, 2017

- When he was charged with over 80, he could not drive for a while. After this, he drove a tow truck with an interlock device. The interlock device was removed about six months ago.
- He no longer drinks alcohol.
- The August 2017 Highway Traffic Act charges of operating a commercial vehicle with no valid CVOR and of overweight vehicle relate to a tow truck he was driving for a Markham company, which did not have the proper paperwork.
- He bought a tow truck recently, which is financed. He has work waiting if he obtains a licence. He has no income and is living on his girlfriend's income. He cannot make enough to pay the tow truck payments by doing other work, such as driving a car.
- He wants the Tribunal to give him a chance by issuing a licence with conditions.
- He made "one mistake." He hid his driving record. He gave MLS only the first page. The towing company he was working for printed the false driving record and gave it to him to submit to MLS. He did not create this document but did submit it. In response to cross-examination, Mr. Packiyathan agreed that his official driver's record does not contain a conviction for "fail to obey lane lights," while the one he submitted to MLS does.

SUBMISSIONS

Ms Ma submitted, for MLS, that the Tribunal should deny Mr. Packiyathan a Tow Truck Driver's Licence.

Ms Ma asserted that Mr. Packiyathan's driving and criminal records raise significant concerns about public safety and his ability to operate a tow truck within the confines of the law. Further, his providing an inaccurate driver's abstract to MLS raises concerns about his honesty and integrity.

Ms Ma noted that Mr. Packiyathan acknowledged, regarding the Criminal Code charge of operating a vehicle with more than 80 mg of alcohol in his blood, that he was drinking, did drive, and was caught. She commented that only six months have passed since the removal of the ignition interlock, so we may not yet know if Mr. Packiyathan is able to refrain from drinking and driving. The older Liquor Licence Act convictions add to concerns about Mr. Packiyathan's past drinking habits. All of this, Ms Ma submitted, leads to a public safety concern in a person seeking a municipal licence that involves driving.

Ms Ma highlighted Mr. Packiyathan's charges and convictions under various statutes, and those under the Toronto Municipal Code, questioning his ability to operate a tow truck in proper mechanical condition and with all the proper paperwork and insurance in place. Ms Ma submitted that this, too, raises a public safety concern.

November 9, 2017

Ms Ma highlighted Mr. Packiyathan's actions in submitting to MLS a driving record that, although he did not create, he knew to be false. She noted that the application for a Tow Truck Driver's licence requires applicants to initial beside the sentence, "The information set forth in this application is true, accurate and in all material respects complete" and that Mr. Packiyathan did initial beside this statement. Ms Ma submitted that this behaviour showed that Mr. Packiyathan had not carried on his business with honesty and integrity.

In his submissions, Mr. Packiyathan repeated that he realizes he made a mistake in submitting the false driving record, but that he did this because he needed a job. He asserted that 80% of the tickets he incurred related to tow trucks were "their fault" in that the company supplied him with tow trucks that were not in good condition. Mr. Packiyathan said that he is trying to move on and do better, with his own tow truck. Mr. Packiyathan asked the Tribunal to give him a chance.

ANALYSIS AND CONCLUSIONS

The Tribunal denied Mr. Packiyathan's application for a Tow Truck Driver's Licence.

In reaching our decision, we applied the Tribunal's mandate, set out in part in the Toronto Municipal Code, § 545-3.B.(3)(c):

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

We heard nothing to contradict Mr. Packiyathan's statements that he needed to work as a tow truck driver to make a living and to pay off the debt on the financed tow truck that he recently purchased. Mr. Packiyathan established his need to make a livelihood.

Turning to the other part of the test, we considered the protection of the public interest, if the Tribunal were to issue Mr. Packiyathan a Tow Truck Driver's Licence.

We considered the grounds for denial of a licence (or renewal), set out in section 545-4.C. of the Municipal Code:

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

November 9, 2017

- (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.

We are of the view that all three grounds in the subsections above are established in this case.

Grounds for a belief that Mr. Packiyathan has not carried on his business in accordance with the law and with integrity and honesty are strongly apparent to us, in this case. Mr. Packiyathan acknowledged that he knowingly provided a falsified driver's abstract to MLS when he applied for his current Tow Truck Driver's Licence. Ms Ma is correct that, having done so, Mr. Packiyathan then initialled beside the sentence stating that his application was true, accurate and complete. These facts raised very grave doubts for us about Mr. Packiyathan's honesty and integrity connected to his municipal licence. His explanation – that he did this because he needed a job – did not, in our view, excuse this behaviour. We noted, further, that when Ms Ma first asked about the document, Mr. Packiyathan appeared to say it was his own record, but that he presented MLS with just the first page. Only after Ms Ma pointed out that his own record actually does not have a conviction related to disobeying lane lights did Mr. Packiyathan tell the whole story, about how the company he worked for prepared the document and told him to take it to MLS. Again, this raised concerns for us about Mr. Packiyathan's honesty and integrity related to the municipal licence.

We noted that Mr. Packiyathan has a number of convictions and pending charges under the Toronto Municipal Code and the Highway Traffic Act, the most recent being incurred at the end of August 2017. To his credit, Mr. Packiyathan has not incurred any new charges for moving violations since the May 2015 date of the charge for driving with over 80 mg of alcohol in his blood. That said, he does have very recent (August 2017) outstanding Highway Traffic Act charges related to concerns about a tow truck. So we cannot say that Mr. Packiyathan has shown that he is committed to a pattern of improvement. Further, we are aware that his provincial driving licence was suspended for approximately eight months, then the vehicle was equipped with an ignition interlock device, for some of the period between May 2015 and present, which likely had the effect of helping Mr. Packiyathan avoid further infractions.

We were troubled by Mr. Packiyathan's statement that he made only one mistake (i.e., in presenting the falsified document to MLS). In fact, Mr. Packiyathan's record includes a Criminal Code conviction for driving with more than 80 mg of alcohol in the blood. Mr. Packiyathan did not appear to have any insight into the fact that this incident also constituted a very grave "mistake" in any driver, and more so in a person seeking a municipal licence related to a driving activity. Nor did Mr. Packiyathan take any responsibility for a variety of other offences when, for example, he stated that the convictions for operating a tow truck in disrepair, or lacking the appropriate paperwork were the fault of the tow truck company. Mr. Packiyathan was tearful when acknowledging his error in presenting MLS with the fake driving record. Even so, he did not appear particularly remorseful; rather, he appeared to be upset at the prospect of losing his tow truck driver's licence.

November 9, 2017

The most compelling reason for denial of this licence lies in the grounds mentioned in subsection 1(e). As set out above, we have reasonable grounds for belief that Mr. Packiyathan's carrying on a tow truck business would infringe the rights of the public and would endanger public health and safety.

We are not of the view that it would be appropriate to issue Mr. Packiyathan a licence with conditions. Perhaps conditions could have helped, had Mr. Packiyathan's driving and Toronto Municipal Code record been the only concerns. But, Mr. Packiyathan's admission of flouting the MLS licensing application process, coupled with his lack of insight into how such actions could impact MLS's ability to regulate licensed activities so as to protect residents of the city, raised concerns for us about his ability to carry on the business with honesty and integrity. We are aware of no conditions which could address this concern. And even if we were, we would note the many, many by-law infractions on Mr. Packiyathan's record along with outstanding by-law charges for very recent conduct, which would make us question the likelihood of his complying with municipally-enforced conditions.

Originally Signed

Moira Calderwood, Chair
Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

Reference: Minute No. 317/17

Date Signed: November 23, 2017