

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

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**Date of**

**Hearing:** August 10, 2017

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

**Re:** Prasanth Thanabalasingam (Report No. 6887)  
Applicant for a Tow Truck Driver's Licence (Application No. B715666)

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

**Counsel for Applicant:** Mr. Noel Gerry

### **INTRODUCTION AND ISSUE**

1. On April 25, 2016, Mr. Prasanth Thanabalasingam ("Mr. Thanabalasingam") applied to Municipal Licensing and Standards (MLS) of the City of Toronto for a Tow Truck Driver's Licence. MLS denied the application and after Mr. Thanabalasingam failed to request a hearing, the application was cancelled.
2. In April 2017, Mr. Thanabalasingam again applied to MLS for a Tow Truck Driver's Licence. MLS denied to issue a licence due to Mr. Thanabalasingam's record of convictions under the Highway Traffic Act (HTA). Mr. Thanabalasingam 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 be denied.
3. The issue before the Tribunal was whether Mr. Thanabalasingam's conduct (as evidenced by charges and/or convictions under the HTA, City of Toronto or City of Markham bylaws, Liquor Licence Act [LLA], Controlled Drugs and Substances Act [CDSA], Compulsory Automobile Insurance Act [CAIA], and the Criminal Code [CC]) provides reasonable grounds to believe that: Mr. Thanabalasingam will not operate a Tow Truck in accordance with law, and with honesty and integrity; his operation of a Tow Truck has resulted or will result in a breach of the law; and his operation of a Tow Truck would infringe or endanger public health and safety.
4. After hearing the evidence and submissions of MLS and Mr. Thanabalasingam, the Tribunal denied to issue a Tow Truck Driver's Licence to Mr. Thanabalasingam for the reasons set out hereafter.

### **CITY'S EVIDENCE**

5. The City called Ms Olga Kusztelska, MLS Supervisor as a witness.

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6. After being affirmed, Ms Kuztelska testified that she was familiar with MLS Report No. 6887, dated June 13, 2017 (“the report”), and signed by Ms Alice Xu, (Supervisor, Municipal Licensing and Standards) on her behalf. MLS staff created the report, and Ms Kuztelska had reviewed it, and could attest to its contents. The report (pgs. 1 to 115) was entered into evidence, and marked as Exhibit #1, without any objection.
7. There was an additional update to the report consisting of a chart prepared by MLS staff, the Integrated Court Offences Network (ICON) data relied on to create the chart, as well as Mr. Thanabalasingam’s three-year provincial driver’s record ordered on August 9, 2017. These 11 pages were entered into evidence, and marked as Exhibit 2, without any objection.
8. Ms Kuztelska testified to the content of Exhibit 1, and in particular, the following:
  - a. A chart prepared by MLS staff and last updated on April 20, 2017, outlining charges and convictions from November 2013 to February 2017 against Mr. Thanabalasingam under the HTA based on information from the ICON, including several charges that occurred in a Tow Truck with MLS plate # 5515 (p. 13-14). It included the following eight convictions:
    - i. January 4, 2017 for “operating a vehicle while performing stunt;”
    - ii. December 19, 2016 for “red light fail to stop”
    - iii. November 16, 2016 for “red light – pass street car improperly;”
    - iv. March 23, 2017 for “colour coat obscuring interior”
    - v. January 16, 2017 for “drive motor vehicle no validation on plate”
    - vi. April 27, 2015 for “speeding 60 km/h in a 50 km/h zone”
    - vii. September 22, 2015 for “unsafe turn/lane change”
    - viii. December 18, 2014 for “speeding 93 km/h in a 60 km/h zone”
  - b. A chart prepared by MLS staff and last updated on April 20, 2017, shows charges and convictions under the CAIA (p. 61) as follows:
    - i. May 16, 2015 charge for “use false/invalid insurance card,” which was withdrawn on February 25, 2016
    - ii. February 25, 2016 conviction for “operate vehicle no insurance and an outstanding fine of \$2,505
  - c. A chart prepared by MLS staff and last updated on April 20, 2017, shows four convictions under the Town of Markham by-law on January 6 and 10, 2017, and on December 13 and 15, 2016, and outstanding fines of \$445.
  - d. A chart prepared by MLS staff and last updated on June 26, 2017, shows the following charges, all of which occurred while driving a tow truck (p. 99):
    - i. June 18, 2017, Town of Markham bylaw
    - ii. June 18, 2017, “improper tire/drawn vehicle” under s. 70(3) a of the HTA

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- iii. April 26, 2017, “operate/permit vehicle fail to display” under s. 85(1) of the HTA
  - iv. April 26, 2017, Town of Markham bylaw
  - v. April 26, 2017, Town of Markham bylaw
  - vi. February 24, 2017, “fail to accurately complete daily inspection report” under s. 107(5) of the HTA
  - vii. February 19, 2017, “defective brakes or braking system” under s. 64(7) of the HTA
- e. A three-year provincial driver’s record abstract for Mr. Thanabalasingam, ordered on May 2, 2017, showing three demerit points, and nine actions. According to the birthdate noted on the record, Mr. Thanabalasingam is currently 21 years old (p. 76).
- i. December 18, 2014 “fail to share road when overtaking”
  - ii. April 27, 2015 “speeding 60 km/h in 50 zone”
  - iii. September 22, 2015 “unsafe move”
  - iv. February 25, 2016 “operate motor vehicle no insurance”
  - v. June 21, 2016 “speeding 75 km/h in 60 zone”
  - vi. August 16, 2016 administrative suspension until August 23 for contest or stunt driving
  - vii. August 23, 2016 licence reinstated
  - viii. November 16, 2016 “disobey red light”
  - ix. December 19, 2016 “disobey red light”

9. Ms Kuztelska testified to the contents of Exhibit 2, and in particular, the following:

- f. Mr. Thanabalasingam appealed two convictions and was convicted of other driving offenses, as noted in the MLS chart created on August 9, 2017, set out in Exhibit 2 as follows:
  - i. April 27, 2017 for “speeding 90 km/h in a 60 km/h zone”, following an appeal of the January 2017 conviction for “operating a vehicle while performing stunt”
  - ii. June 15, 2017 for “improper stop traffic sign at intersection” following an appeal of a December 2016 conviction for “red light fail to stop

Mr. Gerry cross-examined Ms Kuztelska, and during cross-examination Ms Kuztelska testified that:

- 10. She confirmed that Mr. Thanabalasingam’s last offence under the HTA resulting in a conviction occurred on August 16, 2016, approximately one year ago.
- 11. In reviewing the MLS charts on p. 61 showing outstanding fines, she indicated that normally staff checks if fines have been paid, so she assumes that they have not been paid, but she has no firsthand information to confirm this.
- 12. With regard to the Markham bylaw offences, she has no information as to the nature of the offences resulting in the by-law infractions, and is only aware that

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one of them involved a tow truck licensed in the City of Toronto, but is unsure about the other three.

Panel members also questioned Ms Kuztelska, and she testified that:

13. On the chart at p. 61 of the Markham bylaw offences, the tow truck plate identified is licensed in the City of Toronto.
14. On the chart at p. 13, the first three charges from 2017 all relate to a tow truck licensed in the City of Toronto. However, at least two of these offences did not occur in Toronto based on the addresses noted in the accompanying ICON report.
15. The August 16, 2016 date is only with respect to offences under the HTA.

### **APPLICANT'S EVIDENCE**

The Applicant appeared on his own behalf was affirmed and testified as follows:

16. He is 21 years old. He completed high school and then attended Centennial College but dropped out after one semester. He then became a tow truck driver in Markham. He works for Instant Towing and has been licensed to operate a tow truck there for two years. He wants to pursue a career as a tow truck driver. This is his chosen occupation. He currently lives in Pickering with his mother who is single and does not work. He supports her as well as himself on his income.
17. He has worked as a tow truck driver in Markham since December 2015. His boss asked him to obtain a Tow Truck Driver's Licence for the City of Toronto so he could respond to accidents there, particularly on Steeles Avenue at the border with Markham, where many accidents occur.
18. He admitted that he does not have a stellar driving record. He noted that many of his convictions outlined in the chart at page 13 occurred in his personal vehicle and not a tow truck and, in particular, the speeding convictions and the "stunt driving" charge occurred in his own car. The convictions at lines 8, 9, and 10 did occur in a tow truck. However, the two convictions at lines 9 and 10 for "colour coat obscuring interior" and "drive motor vehicle no validation on plate" were the responsibility of the tow truck company (who are responsible for maintaining the tow truck), even though the tickets were issued in his name.
19. The charge for "stunt driving" occurred on Bayview Avenue. He explained that the police were waiting with a radar gun, and it was the driver of the car in front of him, who was "stunt driving," but that he was caught instead. When he appealed this conviction, he succeeded in being convicted of speeding 90 km/h in a 60 km/h zone rather than "stunt driving."
20. Since August 2016, he has been driving very carefully as he was aware that MLS had declined his original application for a Tow Truck Driver's Licence in May 2016 due to his driving record.

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21. He currently holds a valid Ontario driver's licence. He works for Instant Towing in Markham and has been licensed to drive a tow truck there for two years.

Ms Elliott cross-examined Mr. Thanabalasingam and during cross-examination, Mr. Thanabalasingam testified as follows:

22. With respect to the March 19, 2014 conviction for "open liquor in vehicle," Mr. Thanabalasingam testified that he was 18 years old at the time and drinking in his driveway. (Mr. Gerry objected to this question as this conviction had not been specifically raised in Ms Kuztelska's testimony. However, the panel found this question admissible as this conviction is included on p. 50 of the report admitted as Exhibit 1.)
23. He did not have a trial for the convictions listed at p. 61 under the CAIA and the Markham by-law. He confirmed all four convictions under the Markham by-law related to operating a tow truck, and explained as follows:
- a. The January 6, 2017 conviction was for not having his name stitched on his shirt.
  - b. The December 13, 2016 conviction was for failing to provide a run sheet.
  - c. He cannot recall the exact nature of the December 15, 2016 and January 10, 2017 convictions but he does remember that they relate to driving a tow truck.
24. He has two outstanding fines and last month he paid \$1,200.00 in Richmond Hill for outstanding fines owing there. With regard to the outstanding fine of \$2,505.00 for operating a vehicle without insurance, this was for a car he had just bought, and he thought he was covered by insurance at the time. He is on a payment plan.
25. With regard to the January 2017 conviction for stunt driving which he appealed and which resulted in a conviction for speeding 90 km/h in a 60 km/h zone, he again described that the Toronto Police were using radar when he exited onto Bayview Avenue. He indicated that when he appealed, the prosecutor offered him a deal, that is the conviction for speeding, because the prosecutor had no proof to support the conviction of stunt driving.
26. With regard to the general occurrence report from the York Regional Police Service from April 22, 2016 at page 93 of the report, he explained that he and another tow truck driver, who was new on the job, were rushing to an accident scene that day. He was driving the black tow truck and continued down the road, but returned to the intersection after the other tow truck driver had an accident. The police charged them both for dangerous driving, but it was the new tow truck driver who lost control of his vehicle and not him.
27. With regard to his application to MLS dated April 25, 2016, (p. 3 of the report), in which Mr. Thanabalasingam responded, "No," to the question "Are you currently charged with a criminal offence?" even though he had been charged with a driving offence under the Criminal Code only three days earlier, he testified that

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he responded “no” to this question as he did not realize that “dangerous driving” was considered a criminal offence.

28. He admitted that after being charged with dangerous driving, the police gave him a Form 9 that showed a first appearance date for May 2016, but he still maintained he did not believe he had been criminally charged. He was released at the scene, and was not taken to the police station. He maintained it was the other driver that the police were more concerned about that day.
29. He does not currently own a car, and drives a tow truck every day. He started driving a tow truck in December 2015. If he obtains a tow truck driver’s licence in the City of Toronto, he would continue to work for the same company but he would be able to work in Toronto as well as Markham and Durham.

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

30. While he does not own a car now, he did own a Honda Civic at one time and it was in that car that some of the other driving offences occurred. He was charged with stunt driving while driving a “courtesy vehicle.”
31. He did not bring any receipts with him to show that he has paid any outstanding fines. He believes he still owes around \$1,500.00 in fines for driving a car without insurance.

Mr. Gerry did not call any other witnesses.

## **CITY'S SUBMISSIONS**

In her closing submissions, Ms Elliott, on behalf of MLS, submitted that a Tow Truck Driver’s Licence should not be issued to Mr. Thanabalasingam at this time. In particular, she submitted that:

32. She outlined section 545-4 of the Toronto Municipal Code which sets out the reasons for denying a licence, and noted that the standard of proof in that section of “reasonable grounds for belief,” is much lower than the criminal standard of proof “beyond a reasonable doubt,” and is also lower than the civil standard in which a case must be proven on a balance of probabilities.
33. Mr. Thanabalasingam is 21 years old. He first got a driver’s licence in November 2011, less than six years ago. MLS is concerned about the volume and quality of driving offences over that period of time. He has had 12 convictions under the HTA since being licensed, and 16 driving-related convictions in less than four years. Eleven of the convictions are from 2016 and 2017. The convictions raise concerns for public safety, and include excessive speeding (90 km/h and 93 km/h in a 60 km/h zone), improper stop traffic sign, fail to turn out to the left to avoid collision when overtaking, open liquor in vehicle, and operating a car without insurance.

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34. In 2017, Mr. Thanabalasingam has already incurred seven new charges; five of them since he submitted his application for a licence to MLS in April 2017. These charges and convictions relate to driving, and several of them specifically involve driving a tow truck.
35. Mr. Thanabalasingam is not ready for a Tow Truck Driver's licence in Toronto. He has not shown any sign of improvement in his driving, and if anything, his driving record has worsened in terms of the number of new offences over a very short time period.

## **APPLICANT'S SUBMISSIONS**

Mr. Gerry submitted that a licence should be issued to Mr. Thanabalasingam:

36. Mr. Thanabalasingam is only 21 years old, and does not deny his poor past driving record. While he has had some serious charges, including dangerous driving and stunt driving, these more serious charges were withdrawn and he was convicted of lesser offences.
37. Mr. Thanabalasingam does have several speeding convictions. His last conviction under the HTA was for an offence on August 16, 2016. It has been one year since there has been an offence leading to a conviction.
38. The Tribunal heard no evidence regarding the remaining outstanding charges against Mr. Thanabalasingam, and is not in a position to make any determination with respect to those charges.
39. Of the four convictions under the Markham bylaw, two of those were minor. For example, he was convicted for not having a proper name tag on his shirt. He asks the Tribunal to take the nature of the convictions into consideration.
40. Mr. Thanabalasingam has chosen to be a tow truck driver as a profession, and his income from his chosen career supports his single mother as well as himself. Mr. Thanabalasingam has been operating a tow truck in Markham and Durham for about two years. He is now asking for the chance to do so in Toronto.

## **DECISION**

41. In considering whether to grant or deny a licence, or to grant a licence with conditions, the Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
42. Section 545-4 of the Toronto Municipal Code sets out the reasons for denying 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,



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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.

43. Having weighed all of the evidence, the Tribunal is satisfied that MLS has shown that there are reasonable grounds to deny a Tow Truck Driver's Licence to Mr. Thanabalasingam. Mr. Thanabalasingam has not complied with the law in the past and has engaged in conduct which threatened the health or safety of members of the public. At this time, there is insufficient evidence to conclude that Mr. Thanabalasingam is able to comply with the law, in particular with laws with respect to driving. The Tribunal is therefore of the opinion that there are reasonable grounds to believe that Mr. Thanabalasingam will not comply with the law in the future and that the issuance of a Tow Truck Driver's Licence would endanger members of the public.

44. In particular, the Tribunal notes that Mr. Thanabalasingam was first licensed to drive in November 2011, and in less than six years, has incurred many charges and convictions related to his driving. These include convictions for excessive speeding and failing to stop for a red light or at an intersection, an unsafe lane change, and failing to turn out to the left to avoid a collision when overtaking. He has been convicted of multiple bylaw offences in the Town of Markham related to the operation of a tow truck. He has also been convicted of driving without insurance, and of having open liquor in a car. This concerning pattern of conduct continues with his most recent convictions in April and June 2017, and eight outstanding charges for offences in February, April and June 2017, all of which occurred while operating a tow truck. While those charges are still before the courts, they include public safety issues with a February 2017 charge for defective brakes on his tow truck, and a June 2017 charge for having an improper tire on his tow truck. Accordingly, the Tribunal was not satisfied that there has been a change of conduct based on the information before it.

45. In describing two serious incidents in which Mr. Thanabalasingam was initially charged with stunt driving on August 16, 2016, and then dangerous driving on August 22, 2016, he did not appear to take responsibility for his actions.

46. With respect to the April 16, 2016, stunt driving charge, of which he was initially convicted, but then appealed and was instead convicted of speeding 90 km/h in a 60 km/h zone, Mr. Thanabalasingam suggested that the car in front of him was "stunt driving" on Bayview Avenue and the police mistakenly caught him. Mr. Thanabalasingam did not indicate that his excessive speeding, 30 km/h over the legal limit, was concerning or put the public at risk. This was not the first time that



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Mr. Thanabalasingam was charged or convicted of speeding excessively. Mr. Thanabalasingam was convicted in April 2015 of speeding 75 km/h in a 60 km/h zone, and in January 2014 of speeding 93 km/h in a 60 km/h zone. He was also charged with speeding 96 km/h in a 50 km/h zone on April 27, 2016. Although this charge was withdrawn, we note that this incident occurred only 5 days after he was charged with dangerous driving on April 22, 2016. These series of incidents did not occur well in the past, but rather they occurred only one year ago, and they all occurred within a short period of time, which suggests to the Tribunal that Mr. Thanabalasingam failed to take these charges seriously.

47. With respect to the April 22, 2016 dangerous driving charge, for which Mr. Thanabalasingam was later convicted of fail to stop for a red light, we note that the MLS chart at p. 13 and the ICON information at p. 33 incorrectly describe the charge as failing to stop for a streetcar, though there are no streetcars where the incident occurred. Page 32 of the report correctly identifies the conviction under s. 144(18) of the HTA for failing to stop for a red light. The occurrence report for the April 22 incident describes Mr. Thanabalasingam racing through a red light, which in his testimony he admitted that he was rushing to get to an accident, and he was followed by a white tow truck who also raced through the red light, lost control and crashed into a pole on the north side of the intersection. This incident led to another car to spin across four lanes of traffic and crash into a pole on the south side. The Tribunal was very concerned about the events described, whether as outlined in the occurrence report or by Mr. Thanabalasingam himself, even though he was ultimately convicted of the lesser offence of not stopping for the red light. Failing to stop for a red light can lead to a serious accident and is a risk to public safety, and this offence occurred in a tow truck. In addition, though not raised at the hearing after reviewing Exhibit 1, we observe that this incident occurred according to Mr. Thanabalasingam's driving abstract when his licence was suspended.
48. It also appears to the Tribunal that Mr. Thanabalasingam failed to appreciate the significance of the charges against him. On April 22, 2016, Mr. Thanabalasingam was provided with a Form 9 showing the criminal charge, but he testified that because he was not taken to the police station, he did not think it was a criminal driving offence, and so on his application to MLS on April 25, 2016 he did not say he had been criminally charged. Mr. Thanabalasingam seemed to take no responsibility for his actions that day in spite of the accident that occurred, and the fact that he was convicted for running the red light after his appeal.
49. Mr. Thanabalasingam was also convicted of driving without insurance under the CAIA in February 2016. This serious offence places the public at risk should there be an accident, and carries a significant fine of \$2,505.00 to reflect its serious nature... Mr. Thanabalasingam indicated that he still owes about \$1,500.00, and this is supported by Exhibit 1, which shows that a payment of \$500 has been made. According to the information before us, aside from this fine, Mr. Thanabalasingam continues to have several outstanding fines for past offences, which in our view also shows a failure to take responsibility for his past conduct.
50. Mr. Thanabalasingam has been convicted of multiple bylaw offences in the Town of Markham related to the operation of a tow truck which raises questions about

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his ability to abide by similar bylaw offences related to operating a tow truck in Toronto. Mr. Thanabalasingam was also convicted of having open liquor in a car. While this offence occurred some three years ago and is not one of the more serious drinking and driving offences, the Tribunal notes its concern about drinking in connection with a vehicle.

51. In its determination of whether a licence should be issued, refused, or have conditions placed upon it, the Tribunal also considered section 545-3 B (3)(c) of the Toronto Municipal Code, that is the applicant (Mr. Thanabalasingam's) need to earn a living. The Tribunal took note of the fact that Mr. Thanabalasingam is currently employed full time as a tow truck driver in Markham and is able to support himself and his mother on his income. This was not a case in which Mr. Thanabalasingam did not have other means to earn a livelihood .Mr. Thanabalasingam did not testify to having trouble paying his bills or making ends meet, and instead he indicated he sought this licence as his boss wanted him to be able to attend to accidents in Toronto.
52. Looking at the totality of the evidence before us, the Tribunal denied the application for a licence as there was a concerning pattern of charges and convictions with respect to Mr. Thanabalasingam's driving, including with his driving and/or his operation of a tow truck, the very licence which he is seeking from MLS. This pattern of conduct, which puts public safety at risk, has continued into 2017, and there are no livelihood concerns that tip the balance in favour of granting a licence in this case.
53. Although the Tribunal is unable to provide any guarantee as to the outcome of any application to MLS and/or a Tribunal hearing, it may be that in the future Mr. Thanabalasingam can demonstrate to MLS or this Tribunal that he has put his past conduct behind him and is able to abide by the law, and conduct himself with honesty and integrity such that MLS or this Tribunal would not have the concerns that it currently has in respect of public safety and his ability to abide by the law.

Originally Signed

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

Reference: Minute No. 227/17

**Date Signed: December 14 2017**