

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

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**Date of**

**Hearing:** October 19, 2017

**Panel:** Aly N. Alibhai, Chair; Melina Laverty and Gary Yee, Members

**Re:** Dragan Kojovic (Report No. 6678)  
Applicant for the Renewal of Vehicle-For-Hire Driver's Licence No. D05-3127917

**Counsel for Municipal Licensing and Standards:** Mr. Matthew Cornett

**Serbian Interpreter:** Gordana Nikolic

### **SUMMARY**

By letter dated August 2, 2016, Toronto's Municipal Licensing and Standards Division (MLS) advised Mr. Kojovic that their review of his application for the renewal of his Vehicle-for-Hire (Limousine) Driver's Licence disclosed a record of convictions under the Criminal Code of Canada and that these posed a concern to MLS and placed him in breach of the Business Licensing Thresholds. Accordingly, MLS informed Mr. Kojovic that they had reasonable grounds to believe that he is not entitled to the issuance of a Vehicle-for-Hire Driver's Licence under the Toronto Municipal Code. Mr. Kojovic 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 not to renew Mr. Kojovic's Vehicle-for-Hire Driver's Licence. The Tribunal provided an oral decision at the end of the hearing. These are the full reasons for that decision.

### **INTRODUCTION**

1. On July 26, 2001, MLS issued a Vehicle-for-Hire (Limousine) Driver's Licence to Mr. Dragan Kojovic ("Mr. Kojovic").
2. On May 20, 2015, as part of the renewal process for his licence, MLS obtained, from the Ontario Ministry of Transportation (MTO), a copy of Mr. Kojovic's three-year driver's record, which indicated two criminal convictions, as well as the status of his Ontario Provincial Driver's Licence as 'Suspended'. As a result, MLS sent a letter of Vehicle-for-Hire Driver's Licence suspension to Mr. Kojovic and requested that he surrender his licence and photo identification card. Mr. Kojovic failed to surrender his licence and photo identification card to MLS.

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3. On July 24, 2015, Mr. Kojovic submitted to MLS a copy of his three-year driver's record, which indicated the same convictions and status of his Ontario Driver's licence as was revealed on May 20, 2015.
4. On July 19, 2016, Mr. Kojovic submitted to MLS a copy of his three-year driver's record, which indicated an additional suspension and the status of his Ontario Driver's Licence as 'Licenced'.
5. On August 2, 2016, MLS wrote to Mr. Kojovic setting out the grounds for denying the renewal of his Vehicle-for-Hire Driver's Licence.
6. On August 9, 2016, Mr. Kojovic requested a hearing before the Tribunal.
7. On July 5, 2017, MLS received from the Toronto Police Service a copy of an Occurrence Report concerning the same two criminal charges of 'Dangerous Operation of a Motor Vehicle' and 'Fail to Stop at Accident' registered against Mr. Kojovic. On the same date, MLS sent a letter to Mr. Kojovic advising him that his matter would be heard under the new Toronto Municipal Code, Chapter 546.
8. On October 19, 2017, the Tribunal conducted a hearing in this matter, at the outset of which Mr. Kojovic indicated that he wished to proceed without legal representation. At the conclusion of the hearing, the Tribunal decided that Mr. Kojovic's Vehicle-for-Hire (Limousine) Driver's Licence should not be renewed.

## **ISSUE**

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

## **CITY'S EVIDENCE**

Mr. Cornett called Olga Kuztelska, Supervisor, MLS, as a witness for MLS. Ms. Kuztelska was affirmed and gave the following evidence:

10. She has been in her position for 15 years and her responsibilities include overseeing the preparation of reports for the Tribunal and the reviewing of evidence to be put before the Tribunal on behalf of MLS.

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11. She oversaw the preparation of MLS Report Number 6678 and is familiar with the contents of the Report. MLS Report 6678, consisting of 52 pages, was entered into the record as Exhibit 1 with no objection from Mr. Kojovic.
12. Ms. Kuztelska explained that Mr. Kojovic was before the Tribunal because MLS had discovered, as part of the process of the renewal of his Vehicle-for-Hire Driver's Licence, that he had been convicted of offences under the CC.
13. Page 5 of Exhibit 1 is a three-year Driver Record of Mr. Kojovic dated May 20, 2015, which shows that on March 4, 2015, Mr. Kojovic was convicted under the CC of dangerous operation of a motor vehicle and fail to stop at accident, both of which offences occurred on March 19, 2014.
14. Page 12 of Exhibit 1 is a three-year Driver Record of Mr. Kojovic dated July 18, 2016 which shows that Mr. Kojovic received a concurrent one year suspension of his driver's licence from March 4, 2015 through to March 4, 2016 for his CC convictions. The record at page 12 of Exhibit 1 mirrors the record set out at page 5 of Exhibit 1.
15. Page 13 of Exhibit 1 is a three-year Driver Record, which shows that on March 4, 2016, Mr. Kojovic's driver's licence was suspended again for failing to complete a remedial program. Page 13 of Exhibit 1 shows that Mr. Kojovic's driver's licence was reinstated on April 19, 2016.
16. Pages 39 to 44 of Exhibit 1 are a General Occurrence Report of the Toronto Police Service, which contains the details of the incident in which Mr. Kojovic was involved on March 19, 2014, and which resulted in him being charged and then convicted with dangerous operation of a motor vehicle and fail to stop at accident under the CC. Ms. Kuztelska read into the record the synopsis included in the General Occurrence Report which is at page 42 of Exhibit 1.

## **APPLICANT'S EVIDENCE**

Mr. Kojovic did not cross-examine Ms. Kuztelska and, as such, her testimony was unchallenged. Mr. Kojovic, who provided testimony via an interpreter, was affirmed and testified as follows:

17. During his criminal trial, the victim yelled, raised his hands and voice and this is how the victim had behaved at the time of the accident on March 19, 2014, and as was reported by Mr. Kojovic to the police when he was charged with dangerous operation of a motor vehicle and fail to stop at accident.

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18. The judge during his criminal trial told the victim that he was engaging in the same type of behaviour in the presence of the judge as he had at the time of the accident.
19. Mr. Kojovic's lawyer during the criminal trial stopped asking questions because of the way that the victim was behaving at the trial.
20. Mr. Kojovic's car was in reverse at the time of the accident on March 19, 2014.
21. He has completed every program that he was required to complete following his criminal convictions.
22. He was driving his personal vehicle, not a limousine, at the time of the incident.

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

23. He could not recall when his driver's licence was reinstated, but when his period of probation ended, he contacted the MTO and was told to attend at their offices in order to take the written test for his driver's licence.
24. He remained at the scene of the accident.
25. The victim did not report anything to the police for over a month after the incident occurred.
26. While his driver's licence was suspended he used an electric bicycle to get around and to make deliveries.
27. He is not currently working as a limousine driver and does work on an as needed basis delivering mail. He is paid for this work. His hours fluctuate, but he works approximately 20 hours a week.
28. He also works as a soccer coach and software programmer, but he is not usually paid for this work, especially when it is for his family or friends.
29. While he was charged with the offence of operating a motor vehicle without insurance contrary to the Compulsory Automobile Insurance Act as set out in the ICON print-outs at pages 15 to 17 of Exhibit 1, he was not convicted of this offence because he was able to produce his insurance documents to the judge at the time of his trial.
30. Four documents were furnished by Mr. Kojovic: a Criminal Code Driver Improvement Interview Workbook, a Salvation Army Completion of Road

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Rage Program Certificate, a letter dated February 9, 2017 from Dr. O.F. Veidlinger and a letter dated April 8, 2016 from Lerner's Academy indicating that Mr. Kojovic completed a Remedial Measures Program for driver's with motor vehicle related CC convictions. These four documents were entered into the record as Exhibit 2 with no objection from MLS.

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

31. As set out at pages 23 and 24 of Exhibit 1, he paid a total of \$1,690 in fines and victim surcharges for the convictions of dangerous operation of a motor vehicle and failure to remain at the scene of an accident for which he was convicted under the CC. He was given a one year period of probation, concurrent, for both convictions and was prohibited from driving for a period of six months.
32. As part of his probation, he had to report to a probation officer and complete a road rage program and a remedial measures program for driver's convicted of offences under the CC.
33. His probationary period was reduced by his probation officer and he has completed everything that he was required to do and complete under the terms of his probation order.
34. He has three grown adult children who are employed and are not dependent on him. His spouse is a pharmacist.

### **CITY'S SUBMISSIONS**

In his closing submissions, Mr. Cornett, on behalf of MLS, submitted that Mr. Kojovic's Vehicle-for-Hire (Limousine) Driver's Licence should not be renewed. In particular, he submitted that:

35. MLS is very concerned about Mr. Kojovic's two convictions under the CC, and the facts surrounding the two convictions are very serious, and the two convictions give the City reason to be concerned about the safety of the public.
36. As the chart at page 14 of Exhibit 1 shows, Mr. Kojovic has also been convicted of offences under the HTA.
37. Mr. Kojovic's charges and convictions are fairly recent and the Tribunal should take account of the fact that his convictions mean that he was proven guilty on a standard of proof of beyond a reasonable doubt following a criminal trial.

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38. While there may be some question about the sentence that Mr. Kojovic received for his criminal convictions, it is clear, from the record, that his driver's licence was suspended for one year, and given the circumstances surrounding Mr. Kojovic's criminal charges and convictions, a sufficient period of time has not elapsed to give MLS a degree of comfort that he is no longer a danger to public safety.
39. The Toronto Police Service General Occurrence Report in Exhibit 1 sets out a fact pattern which is very serious and which resulted in criminal convictions for dangerous operation of a motor vehicle and failing to remain at the scene of an accident. Mr. Kojovic did not provide any evidence at this Tribunal hearing to suggest that the facts surrounding his two criminal convictions are incorrect or inaccurate.
40. According to the synopsis, Mr. Kojovic yelled, struck the victim with his car, made a U-turn and fled the scene. At the hearing, Mr. Kojovic did not provide any evidence that this did not occur, other than to say that his car was "in reverse at the time of the accident" and that he stayed at the scene.
41. Mr. Kojovic has means, other than driving a limousine, to earn a living, and while these means may not be perfect, he gave evidence that he has earned a living delivering mail and as a professional soccer coach as well as a software programmer.
42. Although it is not clear what, if anything, substantiates Mr. Kojovic's evidence that the victim of the incident in which he was involved did not report the incident to the police until one month or more after it occurred, it is clear from page 39 of Exhibit 1 that the incident was reported to the police on the same day.
43. In light of all the facts surrounding the criminal convictions, the fact that not sufficient time has elapsed since the charges were laid and Mr. Kojovic was convicted, and given that Mr. Kojovic appears to have alternative means available to him to earn a living, MLS believes that his Vehicle-for-Hire (Limousine) Driver's Licence should not be renewed.

## **APPLICANT'S SUBMISSIONS**

Mr. Kojovic submitted that:

44. He wishes to have a chance to be able to drive a limousine again.
45. The criminal offences with which he was charged and convicted occurred in his personal vehicle and not while he was working as a limousine driver.

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46. Everything that happened in relation to his criminal convictions happened while he was not working and on his personal time and in his own vehicle.
47. He is not paid for his services as a soccer coach and software programmer because he provides these services for friends and acquaintances that are familiar with his abilities in these areas, and the only form of payment that he receives is in the nature of a dinner or other such reciprocal favour for his work.
48. He does not feel guilty as he has completed everything that he was required to complete and do as part of his sentence for his criminal convictions. There is nothing in the records of MTO which indicate that he has not completed all that he was required to complete as part of his sentence for the two CC convictions.

## **DECISION**

49. In considering whether to renew, grant or deny a licence, the Tribunal is directed by section 546-8 of the Toronto Municipal Code to “have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood”.
50. Section 546-4 of the Toronto Municipal Code sets out the grounds 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.
51. Having considered and weighed all the evidence, the Tribunal determined that, at this time, the protection of the public interest outweighed Mr. Kojovic’s need to earn a living as a limousine driver, and that there are reasonable grounds to believe that carrying on of the business of a

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limousine driver by Mr. Kojovic would endanger the health or safety of members of the public.

52. The Tribunal noted that the facts leading to Mr. Kojovic's two criminal convictions for dangerous operation of a motor vehicle and fail to stop at accident were very serious. Mr. Kojovic drove his vehicle towards the victim and struck him during an incident where Mr. Kojovic became impatient and apparently got into an argument with the victim blocking Mr. Kojovic's vehicle while the victim was directing a truck into a laneway. Mr. Kojovic's version of what happened had a few differences with the police occurrence report at pages 42-43 of the Exhibit 1, but these were minor in nature. The Tribunal noted that the basic facts were proven, during a criminal trial, on a standard of proof of beyond a reasonable doubt, and resulted in a sentence including a one year period of probation, monetary fines, and the requirement that Mr. Kojovic complete a road rage program, as well as a remedial driving program for drivers convicted of CC offences.
53. The Tribunal observed that Mr. Kojovic's conduct which resulted in his criminal convictions was in the recent past (some three and a half years ago) and that his driver's licence was only reinstated a little over one year ago. At present, not enough time has passed since Mr. Kojovic's very serious driving-related criminal conduct to enable the Tribunal to find that there are no longer reasonable grounds to believe that Mr. Kojovic can operate as a limousine driver without being a danger to the safety of the public. These were criminal convictions, and not less serious Highway Traffic Act convictions.
54. It is not relevant that that the conduct of Mr. Kojovic which resulted in his two criminal convictions occurred when he was driving his personal vehicle and not when he was working as a limousine driver. Indeed, both of Mr. Kojovic's criminal convictions involved the operation of a motor vehicle, which is directly relevant to the business of being a limousine driver.
55. Mr. Kojovic also emphasized that he had completed all the required courses, including a road rage program, as part of his sentence and which allowed him to get his driver's licence back,. However, these minimal requirements to get his driver's licence back do not provide much support to giving Mr. Kojovic his limousine licence back just three and a half years after the criminal offences. The Tribunal noted that more passage of time would benefit Mr. Kojovic and his argument during the hearing that his previous criminal conduct should no longer provide reasonable grounds for denying him a limousine driver's licence.
56. In its determination of whether a licence should be issued or refused, the Tribunal also considered section 546-8(3)(c) of the Toronto Municipal Code, that is, Mr. Kojovic's need to earn a living.



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57. In this regard, the Tribunal agreed with the position of MLS that Mr. Kojovic has the means at this time to earn a living by providing mail delivery services as he currently does on an as needed basis (averaging about 20 hours a week) and possibly by providing services as a soccer coach and software programmer, services for which he could potentially receive remuneration.
58. The Tribunal also noted that Mr. Kojovic does not have any dependants who rely on him for financial assistance, and that his spouse is a pharmacist and is presumably gainfully employed as such.
59. In all the circumstances then, the Tribunal determined that, at this time, the protection of the public interest in this matter outweighed the need for Mr. Kojovic to earn a living.
60. For all the foregoing reasons and taking into account all of the evidence which was before the Tribunal, Mr. Kojovic's Vehicle-for-Hire Driver's Licence, No. D05-3127917, shall not be renewed at this time.

Originally signed

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Aly N. Alibhai, Chair  
Panel Members, Melina Laverty and Gary Yee concurring

Reference: Minute No. 293/17

**Date Signed:** November 6, 2017